



LATIN  
AMERICAN  
IMMIGRATION  
ASSOCIATION

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UNIENDO FAMILIAS

ESSENTIALS OF EMPLOYMENT BASED IMMIGRATION

DAYS 1 & 2



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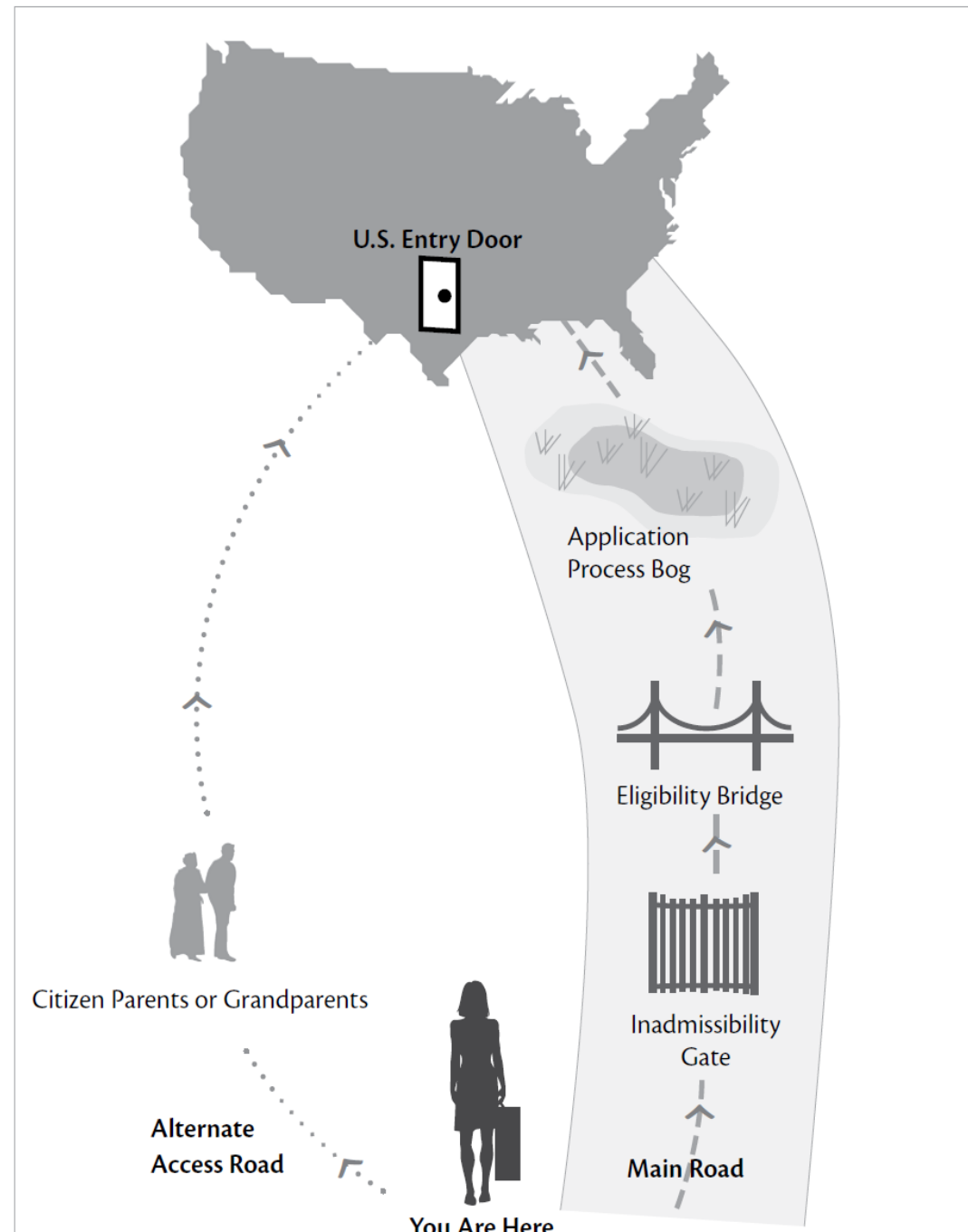
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# Course Objectives

- Gain knowledge of Employment Based Visas
- Gain knowledge of Employment Based Green Cards
- Gain knowledge of the Labor Certification process of for Nonimmigrant Employment Visas
- Gain knowledge for the Labor Certification process for Nonimmigrant Employment

# Immigrating to the United States

## Roadmap to U.S. Immigration



# Immigrating to the U.S.

- There are 5 ways someone can come to the U.S. either permanently or temporarily
  - Family Based Nonimmigrant Visa
  - Family Based Immigrant Visa (LPR)
  - School Based Student Visas
  - Employer Based Nonimmigrant Visa
  - Employer Based Immigrant Visa (LPR)



EMPLOYMENT VISA'S HAVE A LONG HISTORY IN THE U.S.



ORIGINALLY STARTED AS A MEANS TO MEET THE DEMANDS OF A RAPIDLY GROWING COUNTRY.



DESIGNED TO MEET THE DEMANDS OF GROWING TECHNOLOGY, AS WELL AS SHORTAGES IN AGRICULTURE

## Employment Visa History

## Employment Visas

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Most intending immigrants do not have the luxury of a close family member to file a family petition

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Family petitions filed by non-immediate relatives can take up to 25-26 years before the immigrant is allowed to come to the U.S.

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Employment visas offer a viable alternative for qualified individuals

# Employment and Family Based Nonimmigrant Visas

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Similar to Family Based (FB)  
immigration, Employment Based (EB)  
visas have two categories of visa's

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Nonimmigrant (majority of EB  
immigration)

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Immigrant (Green Cards)

# Employment and Family Based Nonimmigrant Visa Similarities

Allow temporary status in the United States for a specific purpose

Most do not directly lead to an immigrant visa (green card)

Can be easily revoked

Must meet certain criteria

# Contrasts of Employment and Family Based Nonimmigrant Visa



Intending immigrants must meet much higher criteria such as having a high level degree, “extraordinary ability” of special talent in the arts or athletics



Some require a Labor Certification to ensure that U.S. workers are not displaced



Time allowed to remain in the U.S. for a longer period of time than Family NI Visas

## The intending immigrant must:

- Have a qualifying organization/employer to file the immigrant petition
- Meet a similar set of criteria as designated with their visa
- Must be admissible to the United States (waivers may be available)
- Must pass a background check
- Must pass a medical examination

Similarities  
between  
Family Based  
(FB) and  
Employment  
Based  
(EB) Immigrant  
Visas

EB Immigrant  
Visas are  
categorized into  
preference  
categories similar  
to FB visas

Similarities  
between  
Family Based  
(FB)and  
Employment  
Based(EB)  
Immigrant  
Visas

## Contrasts of Family and Employment Immigrant Visas

- EB Immigrant Visa categories are less over saturated so priority dates are mostly current – or the time frame are only a couple of years (2 ½ - 12 years vs. 8-26 years)
- Must meet stringent qualifications for employment IN ADDITION to the same stringent background and medical background checks as family based immigration
- Requires a Labor Certificate Process to ensure U.S. workers are not displaced.
  - Very lengthy and complicated process

# Essential Immigration Concepts

## Key Distinctions

Citizen vs. Foreign National

Immigrant vs. Nonimmigrant

“Visa” vs. “Status”



## Citizen vs. Foreign National

- Citizens are generally not subject to most immigration laws
  - Some individuals may be denaturalized, and deported
- All Noncitizens are subject to immigration law (*including exclusion and deportation for violations of the law*), whether on a temporary visa or admitted for permanent residence
- U.S. Immigration law treats all non-U.S. citizens the same – ALL NON USC ARE ALIENS.

Key  
Distinction #1

## Key Distinction #2

### Immigrants vs. Nonimmigrants

- Immigrants/Permanent Residents are allowed to live and work in the United States without restriction
  - Law Presumes “Immigrant Intent” of All Noncitizens (unless they can prove qualification for a nonimmigrant category)
- Nonimmigrants are admitted for a specific, temporary purpose enumerated in the Immigration and Nationality Act
- Nonimmigrant intent
- Some nonimmigrant categories allow for dual intent

## Assumption of Immigrant Intent

- The INA specifically assumes that all people seeking admission intend to immigrate to the United States unless they can establish to the satisfaction of the consular officer that they have temporary intent.
  - See, INA § 214(b); 8 C.F.R. § 1184(b).

# Assumption of Immigrant Intent

- Every alien – (*other than a non-immigrant described in subparagraph (L) or (V) of INA section 101(a)(15), and other than a non-immigrant described in any provision of 101(a)(15)(H)(i) except subclause (b1)*) ***shall*** be presumed to be an immigrant until he establishes to the satisfaction of the:
  - *consular officer*, at the time of application for a visa;
  - and the *immigration officers*, at the time of the application for admission, that he is entitled to non-immigrant status under section 101(a)(15)
    - See INA § 214(b); 8 C.F.R. § 1184(b). See also INA § 101(a)(15); 8 U.S.C. § 1101(a)(15)

- Visa vs. Status

- Visa = Permission to enter

- Visa is a stamp in the passport – used for entry into the U.S.

- Status = Permission to stay – rights, privileges, how long and for what purpose

- I-94 record indicates status (purpose and length of authorized stay)

Key Distinction  
#3

# Immigrant or Non- immigrant?

**Immigrant** = every alien except an alien who is within one of the non-immigrant classes (including undocumented persons)

**Non-immigrant** = aliens who are able to establish temporary or “non-immigrant” intent,” have residence in a foreign country that they do not INTEND to abandon, and are seeking admission to the U.S. for a temporary period of time, for a specific reason.

- See, INA § 101(a)(15); 8 U.S.C. § 1101(a)(15)

# 01

The period of time a noncitizen may be admitted depends on the proposed/intended activity in the US.

## Non-immigrant Admission to the United States



90 Day

# Misrepresentation Rule

Foreign Affairs Manual (FAM)



9 FAM 302.9-4(B)(3)(g)(2)

- State Department abruptly amended the Foreign Affairs Manual in September 2017 to provide consular officers with broader grounds to find that foreign nationals misrepresented their intentions when they came to the United States on nonimmigrant visas.
- A finding of fraud or misrepresentation under INA § 212(a)(6)(C)(i) can result in a permanent ground of inadmissibility.

# 90 Day Misrepresentation Rule

- The updated FAM provision at [9 FAM 302.9-4\(B\)\(3\)\(g\)\(2\)](#) covers instances of conduct that ***may be inconsistent with representations that visa applicants made*** to consular officers when applying for nonimmigrant visas or to DHS officers at US ports of entry at the time of admission.
- The inconsistent conduct ***must have occurred within 90 days of entry. (previously more than 30 days, but less than 60 days)***
- The FAM instructs consular officers to presume that the applicant's representations about engaging in status compliant activity were ***willful misrepresentations of his or her intention to seek a visa or entry into the United States.***

# 90 Day Misrepresentation Rule

- If the foreign national engaged in conduct inconsistent with his or her nonimmigrant status **more** than 90 days after entry
  - no presumption of willful misrepresentation arises, although consular officers may still find facts that provide a reasonable belief that the foreign national misrepresented his or her purpose of travel at the time of applying for a visa or admission into the US.
- Although this provision is popularly known as the “90 Day Misrepresentation Rule”
- The FAM is not codified law or regulation, but merely sub-regulatory guidance for consular officials abroad
  - – but can have irreparable consequences to foreign nationals that later seek to immigrate to the US

## Willful Misrepresentation

- The FAM cites the following examples of inconsistent conduct that can result in a presumption of willful misrepresentation:
  1. Engaging in unauthorized employment;
  2. Enrolling in a course of academic study, if such study is not authorized for that nonimmigrant classification (e.g. B status);
  3. A nonimmigrant in B or F status, or any other status prohibiting immigrant intent, marrying a United States citizen or lawful permanent resident and taking up residence in the United States; or
  4. Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment.

Willful  
Misrepresentation:  
analysis with the  
fourth criterion  
under 9 FAM 302.9-  
4(B)(3)(g)(2)(b)(iv):

*Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment.*

- Assume that a person is admitted into the United States in B-2 status for purposes of tourism but who is also an exceptional violinist.
  - Now, Suppose this person begins to get paid for violin performances within 30 days of admission.
- Such an activity would likely **be inconsistent with the purpose of the B-2 visa** and she would probably be presumed to have misrepresented her intentions under the 90 day guidance.

Willful  
Misrepresentation:  
analysis with the  
fourth criterion  
under 9 FAM 302.9-  
4(B)(3)(g)(2)(b)(iv):

- On the other hand, if this person's employer first files a change of status from B-2 to O-1B (a visa for people who can show extraordinary ability in the arts or extraordinary achievement in the motion pictures or television industry) on the **30<sup>th</sup> day**;
- She only begins to concertize as a violinist after the O-1B petition and request for change of status from B-2 to O-1B is **approved**,
- A literal reading of the fourth criterion suggests that the 90 day rule has not been implicated.
- This person undertook the work activity "*for which a change of status would be required*" and should not be presumed to have misrepresented under INA § 212(a)(6)(C)(i) even though the change of status application was filed within 90 days.
  - May still want to have at least an attorney consult.

# Future Impact of 90 Day Violations

- It should be noted that this interpretation must be viewed from the State Department's perspective that resulted in this guidance in the FAM.
- The USCIS, which adjudicates visa petitions within the US, will not be bound and the DOS is not trying to ask other agencies to follow this interpretation.
  - Thus, what the DOS is really saying is that if the USCIS approves such a change of status petition that was filed within 90 days, a consular official will not find a person inadmissible for misrepresentation, if the USCIS already approved it.
- Even though USCIS is not required to follow the FAM, they are entitled to the same legal presumption of a material misrepresentation due to a 90 day rule violation.
  - There is danger to anyone that will need to leave the US and then later seek admission who violates the 90 day rule.

# Non-Immigrant Visas

# Nonimmigrant Concepts and Procedures

- Basic Procedures
  - Eligibility
  - Admissibility
  - Employer or Individual Petition
  - Employee Visa Stamp Application
  - Change of Status
  - Extension of Status
  - Adjustment of Status

# ELIGIBILITY

- In immigration, ELIGIBILITY, refers to meeting the criteria for a certain visa.
- F-1 Student Visa:
  - Enrolled in a Participating School
  - Be enrolled by school in SEVIS
  - Demonstrate Funds to Support Self while in the US
  - Demonstrate Nonimmigrant Intent (return to home country)

# ADMISSIBILITY

- In immigration ADMISSIBILITY refers to
- Who can LEGALLY ability to be granted status or ADMISSION to the US
  - Be approved for a nonimmigrant visa
  - Be approved for legal permanent residence
- If a person is inadmissible to the US, then even if they meet the eligibility criteria otherwise.

# Inadmissibility

Most Common Grounds of Inadmissibility

Is a waiver available?

# Inadmissibility

## INA § 214B is the #1 reason for visa denials!

- Failure to establish entitlement to nonimmigrant status (nonimmigrant intent)
  - Most commonly B1/B2 visas are the more difficult to prove nonimmigrant intent.
- Remember:
  - The Immigration and Naturalization Act (INA) states under Section 214b that:
    - Every alien *shall be presumed to be an immigrant* until he establishes to the satisfaction of the consular officer, at the time of application for admission, that he is entitled to a nonimmigrant status (that he/she has nonimmigrant intent)

## Inadmissibility / Refusal due to Administrative Processing

### **INA § 221G is the #2 reason for visa denials and the #1 reason for delays!**

- A visa refusal under section 221(g) of the Immigration and Nationality Act (INA) means the applicant did not establish eligibility for a visa to the satisfaction of the consular officer.
  - The consular officer determined that the applicant was not eligible for a visa after completing and executing the visa application and any required interview.

## Inadmissibility / Refusal due to Administrative Processing

- It is possible that a consular officer will reconsider a visa application refused under 221(g) at a later date, based on additional information or upon the resolution of administrative processing, and determine that the applicant is eligible.

# Administrative Processing

- When a consular officer refuses a case under 221(g), she or he will convey to the applicant:
  - whether the applicant is required to provide any further documentation or information; or
  - whether the case requires additional administrative processing.
- This is common.

# Administrative Processing

- If an application is placed in administrative processing, processing times can vary.
- Challenging to follow-up and get the case moving again.
- The consulates work at the speed of their own drums.

# Administrative Processing

- Secret email addresses for Mexico:
- CDMX: [mexcityadminprocess@state.gov](mailto:mexcityadminprocess@state.gov)
- [Visas\\_mexico@state.gov](mailto:Visas_mexico@state.gov)
- [PLUMexicoCity@state.gov](mailto:PLUMexicoCity@state.gov)

# Administrative Processing

- Each contact/inquiry must include the following Applicant information:
- Full Name
- DS-160 Number
- Passport Number
- Date of Birth
- Place of Birth
- Address

# Status of Pending Visa Application

## Approved



U.S. Department of State  
NONIMMIGRANT VISA APPLICATION

**Issued**

Application ID or Case Number: **AA009XW915**  
Case Created: 22-Feb-2021  
Case Last Updated: 03-Aug-2022

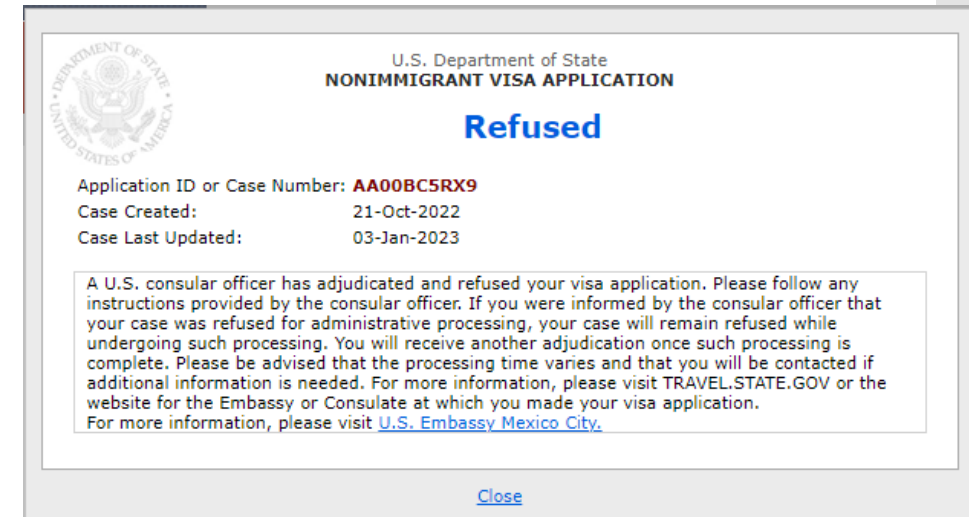
Your visa has been approved and is in final processing. Please visit [mexico.usvisa-info.com](http://mexico.usvisa-info.com) to obtain your DHL tracking number. If you have not received a tracking number in more than 10 working days, please contact the embassy or consulate where you submitted your application.

Su visa ha sido aprobada y se encuentra en proceso final. Por favor visite [mexico.usvisa-info.com](http://mexico.usvisa-info.com) para obtener el número de guía DHL y pueda recoger su documento. Si han pasado más de 10 días y no le han asignado un número de guía, por favor contacte a la Embajada o Consulado en donde realizó su trámite.

For more information, please visit [U.S. Embassy Mexico City](http://U.S. Embassy Mexico City).

[Close](#)

## In Admin Processing



U.S. Department of State  
NONIMMIGRANT VISA APPLICATION

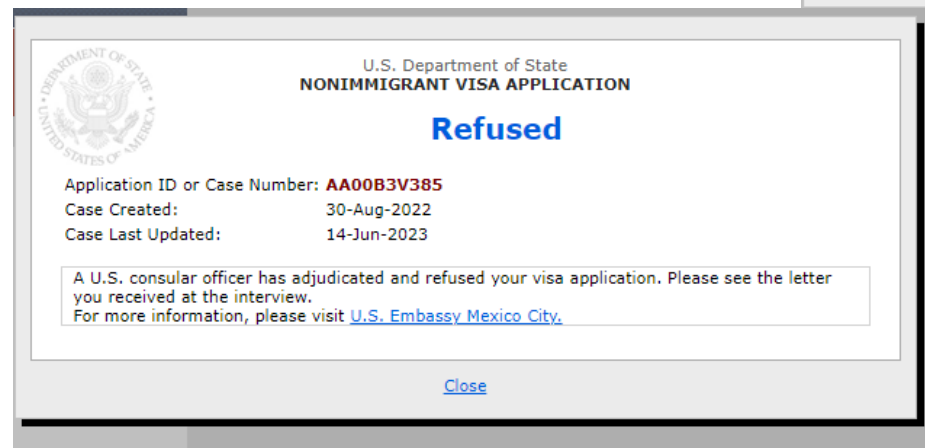
**Refused**

Application ID or Case Number: **AA00BC5RX9**  
Case Created: 21-Oct-2022  
Case Last Updated: 03-Jan-2023

A U.S. consular officer has adjudicated and refused your visa application. Please follow any instructions provided by the consular officer. If you were informed by the consular officer that your case was refused for administrative processing, your case will remain refused while undergoing such processing. You will receive another adjudication once such processing is complete. Please be advised that the processing time varies and that you will be contacted if additional information is needed. For more information, please visit [TRAVEL.STATE.GOV](http://TRAVEL.STATE.GOV) or the website for the Embassy or Consulate at which you made your visa application. For more information, please visit [U.S. Embassy Mexico City](http://U.S. Embassy Mexico City).

[Close](#)

## Denied



U.S. Department of State  
NONIMMIGRANT VISA APPLICATION

**Refused**

Application ID or Case Number: **AA00B3V385**  
Case Created: 30-Aug-2022  
Case Last Updated: 14-Jun-2023

A U.S. consular officer has adjudicated and refused your visa application. Please see the letter you received at the interview. For more information, please visit [U.S. Embassy Mexico City](http://U.S. Embassy Mexico City).

[Close](#)

No Waiver  
Available  
Request Review or  
Reapply



# Inadmissibility under INA §214b

The demonstration of nonimmigrant intent is discretionary to the Consular Officer.

You can request supervisor review of the decision, if the consulate decides to review the decision, the application will be placed in Administrative Processing.

- This is often a desirable option for B1/B2 visas which have extremely long wait times.

Ultimately the majority of requests for review under 214b are denied, or never responded to.

## Request Supervisor Review for

- Consulates make mistakes or Sometimes the Issue is Something minor – but sometimes it is something major.
- Requesting supervisory review may be an option to cure a defect, real or imagined, without the need for a new application (most important as B1/B2 visas are not readily available.
  - Simple things like missing documents, didn't have proof of nonimmigrant intent, etc. can be handled by an immigration consultant.
- More complex issues, such as inadmissibility under INA § 212(a), et. seq., will require legal analysis and legal strategy, and therefore require an attorney.

# Inadmissibility under INA § 212(a)

More severe issues of inadmissibility

Will almost always require an attorney

Lets look at the common INA § 212 (a) grounds

212(a)(2)(A)(i), which prohibits issuing a visa to any person who has committed a crime involving moral turpitude, or a violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance.

212(a)(2)(C), which prohibits issuing a visa to any person who has been involved in the illicit trafficking in any controlled substance or chemical, or is the immediate family member of an illicit trafficker.

212(a)(6)(C)(i), which prohibits issuing a visa to any person who seeks or has sought to procure a visa, other documentation, admission into the United States, or immigration benefit by fraud or willfully misrepresenting a material fact.

212(a)(6)(C)(ii), which prohibits issuing a visa to any person who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose.

212(a)(6)(E), which prohibits issuing a visa to any person who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of the law.

212(a)(9)(A)(i) / (ii), which prohibits issuing a visa to any person who was ordered removed at a port of entry or at a place other than a port of entry, either summarily by a DHS official, or after administrative proceedings.

212(a)(9)(B)(i), which prohibits issuing a visa to any person who has been unlawfully present in the United States for a period of more than 180 days but less than 1 year.

212(a)(9)(B)(ii), which prohibits issuing a visa to any person who has been unlawfully present in the United States for one year or more.

212(a)(9)(C), which prohibits issuing a visa to any person who has been unlawfully present after previous immigration violations, or has been unlawfully present in the United States for an aggregate period of more than 1 year and attempts to reenter the United States without being admitted, or has been ordered removed under any provision of law and who enters or attempts to reenter the United States without being admitted.

212(a)(1)( ), which prohibits issuing a visa to any person due to health-related grounds.

212(a)( )( )( ), which prohibits issuing a visa to any person who:

Other:

Let's Look at  
an INA §  
212(a) Denial  
Notice



Type	Purpose	Duration of Time	Requirements	Restrictions	Dependents
B-1	Temporary visa for professional activities related to business abroad	"Reasonable" period of time for completion (Up to 1 yr w/6mo. Ext)	<ol style="list-style-type: none"> <li>1. Provide evidence of intent to return to home country</li> <li>2. Show a permissible business activity</li> <li>3. Show financial means for stay</li> </ol>	Cannot undertake employment in the US	No Benefits
B-2	Temporary visa for personal reasons	Varies on reason. Can be extended	Provide evidence of intent to return to home country & financial means	Cannot undertake employment in US (IR can be exempt for AOS)	No Benefits
E-1 E-2	E1- Carry on international trade E2 – Investment between US and a foreign state	2 years, with extensions in 2 year increments or 4 Years for Fee!	<p>E1 – Trade must be principally between US and treaty country</p> <p>E2 – must have substantial investment</p>		Spouse or Child of E1/E2 Spouses are granted automatic EA – No EAD
F-1	Academic Students	Duration of Program (D/S)	<ol style="list-style-type: none"> <li>1. Foreign residence with intent to return.</li> <li>2. Enter US temporarily and solely for the purposes of pursuing a course of study.</li> <li>3. Prove sufficient financial support</li> <li>4. Demonstrate proficiency in English</li> </ol>	Can only work in certain circumstances or Optional Practical Training (OPT)	<ol style="list-style-type: none"> <li>1. Certain family members can enter in F-2 status. They cannot attend school in F-2.</li> <li>2. Child may attend K-12</li> </ol>

# Non-Immigrant Visa Chart

Type	Purpose	Duration of Time	Requirements	Restrictions	Dependents
H-1B DUAL INTENT	Temporary employment in specialty occupations	3 years, w/extension upto 6 years; may extend pat 6 <sup>th</sup> years in certain circumstances	<ol style="list-style-type: none"> <li>1. Occupation must require theoretical &amp; practical application of highly specialized knowledge.</li> <li>2. Bachelor's degree or equivalent in the specific specialty</li> </ol>	<ol style="list-style-type: none"> <li>1. Annual numerical cap on certain H-1B applications</li> <li>2. H-1B must remain employed to maintain lawful status</li> </ol>	Spouses can work in LIMITED circumstances. Minor children classified as H4. Dependents cannot work in the US on H4 status.
H-2B	Temporary workers performing labor or services for seasonal work/peak load or intermitted need	1 year. Extensions in max 1 year increments up to 3 years	<ol style="list-style-type: none"> <li>1. Be performing on temporary services</li> <li>2. Employer must demonstrate that no US workers are capable of performing such services</li> </ol>	Employment of aliens must not adversely affect wage rate and working conditions of US workers Labor Certification Required.	No Benefits
H-3	Temporary worker invited for the purpose of instruction/training	Length of training – 2 years maximum	Cannot engage in productive employment unless it is incidental and necessary to the training and pursuing a career abroad		

# Non-Immigrant Visa Chart

Type	Purpose	Duration of Time	Requirements	Restrictions	Dependents
J-1	Exchange Visitors	Duration of Program	<ol style="list-style-type: none"> <li>Varies by program -Researcher, trainee/intern, etc.</li> <li>May have home country residency requirement (INA 212e)</li> </ol>	May be subject to 2 year residency requirement that requires them to return to home country for 2 years.	<ol style="list-style-type: none"> <li>Spouse and minor children are classified as J-2</li> <li>May accept employment for their own support w/EAD</li> </ol>
K-1 DUAL INTENT	Fiancé of US Citizen	90 Days *Immigrant Intent	Marry within 90 days of entry Must have personally met within the past 2 years (one exception)	<ol style="list-style-type: none"> <li>No legal impediments to marriage</li> <li>Petitioner must disclose certain criminal conviction</li> </ol>	<ol style="list-style-type: none"> <li>Minor children of K-1 may accompany K-1 in K-2 status.</li> <li>K-1 may obtain work authorization</li> </ol>
L-1A L-1B DUAL INTENT	L-1A – Transfer of personnel between US and foreign entities L-2A – Specialized knowledge	L-1A - 2 years, with extensions in 2 year increments – 7 years MAX L-2A – 5 Years MAX	Must have been employed abroad continuously for 1 of past 3 years by parent, branch, affiliate or subsidiary of US company prior to application. Must be entering in the capacity that managerial, executive or specialized knowledge	Specialized knowledge must be obtained by applicant prior to enter the US – should not require any training in US	<ol style="list-style-type: none"> <li>Spouse and Minor Child classified as L-2.</li> <li>Spouse may accept employment – no EAD required</li> </ol>

# Non-Immigrant Visa Chart

Type	Purpose	Duration of Time	Requirements	Restrictions	Dependents
O-1 <b>QUASI-DUAL INTENT</b>	<p>O-1A: Individuals with an extraordinary ability in the sciences, education, business, or athletics (not including the arts, motion pictures or television industry);</p> <p>O-1B: Individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry;</p>	3 years, UNLIMITED extensions are available	<ol style="list-style-type: none"> <li>1. Must be sponsored by employer.</li> <li>2. Must prove sustained national or international acclaim</li> <li>3. <b>O-2: Individuals who will accompany an O-1 artist or athlete to assist in a specific event or performance;</b></li> </ol>	<ol style="list-style-type: none"> <li>1. Intend to remain temporarily</li> <li>2. Dual intent recognized, but need Advanced Parole to travel with AOS</li> </ol>	<p>Spouses / Children accompany on O-3</p> <p>Employment for spouse/child not authorized</p>
P-1	Athletes and Group Entertainers	Up to 5 years, with extensions up to 5 years	<ol style="list-style-type: none"> <li>1. Performs as an athlete; or</li> <li>2. Performs as part of a group or team that is "internationally recognized"</li> </ol>	Intend to remain temporarily	No Benefits
P-3	Culturally Unique Program	Up to 1 year, with extension up to 1 year	Must be an artist or entertainer coming to the US individually or as part of a group to teach, perform, or coach a culturally unique program		<ol style="list-style-type: none"> <li>1. Spouse and unmarried children enter as P4</li> <li>2. May not engage in employment</li> <li>3. Can attend school</li> </ol>

# Non-Immigrant Visa Chart

Type	Purpose	Duration of Time	Requirements	Restrictions	Dependents
TN	Visas for Canadians and Mexicans to work temporarily in the US	3 years	<ol style="list-style-type: none"> <li>1. Must engage in "activities at a professional level"</li> <li>2. Have at least a baccalaureate degree, or appropriate credentials demonstrating status as a professional</li> </ol>	<ol style="list-style-type: none"> <li>1. No intent to immigrate</li> <li>2. Limited to specific professions</li> </ol>	Spouses and unmarried children under 21 may enter on TD-1 and TD2 visas
U	Victims of Certain Crimes	4 years	<ol style="list-style-type: none"> <li>1. Victim of a qualifying crime</li> <li>2. Suffered substantial physical or mental harm from criminal activity</li> <li>3. Possess information on crime</li> <li>4. Must be helpful in the Investigation</li> <li>5. Crime occurred in US or US Territory</li> </ol>		<ol style="list-style-type: none"> <li>1. Spouses and Unmarried Children under 21</li> <li>2. Parents (some cases)</li> <li>3. Unmarried Sibling (some cases)</li> </ol>

# Non-Immigrant Visa Chart

We will be  
back at 35  
minutes past  
the hour

1235 / 135 / 235 / 335-----935



# Employment Based NIV Application Process

## Where do I start?

- Some EB NIV Applications begin in the US with USCIS.
- Some EB NIV Applications begin by filing form DS-160
- Some EB NIV Applications can begin in either place.

EB NIV that  
REQUIRE a  
Petition with  
USCIS

Form I-129

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H-1B, H-2A, H-2B, H-3

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L-1

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O-1, O-2

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P-1, P-1S, P-2, P-2S, P-3, P-3S

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Q-1

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R-1

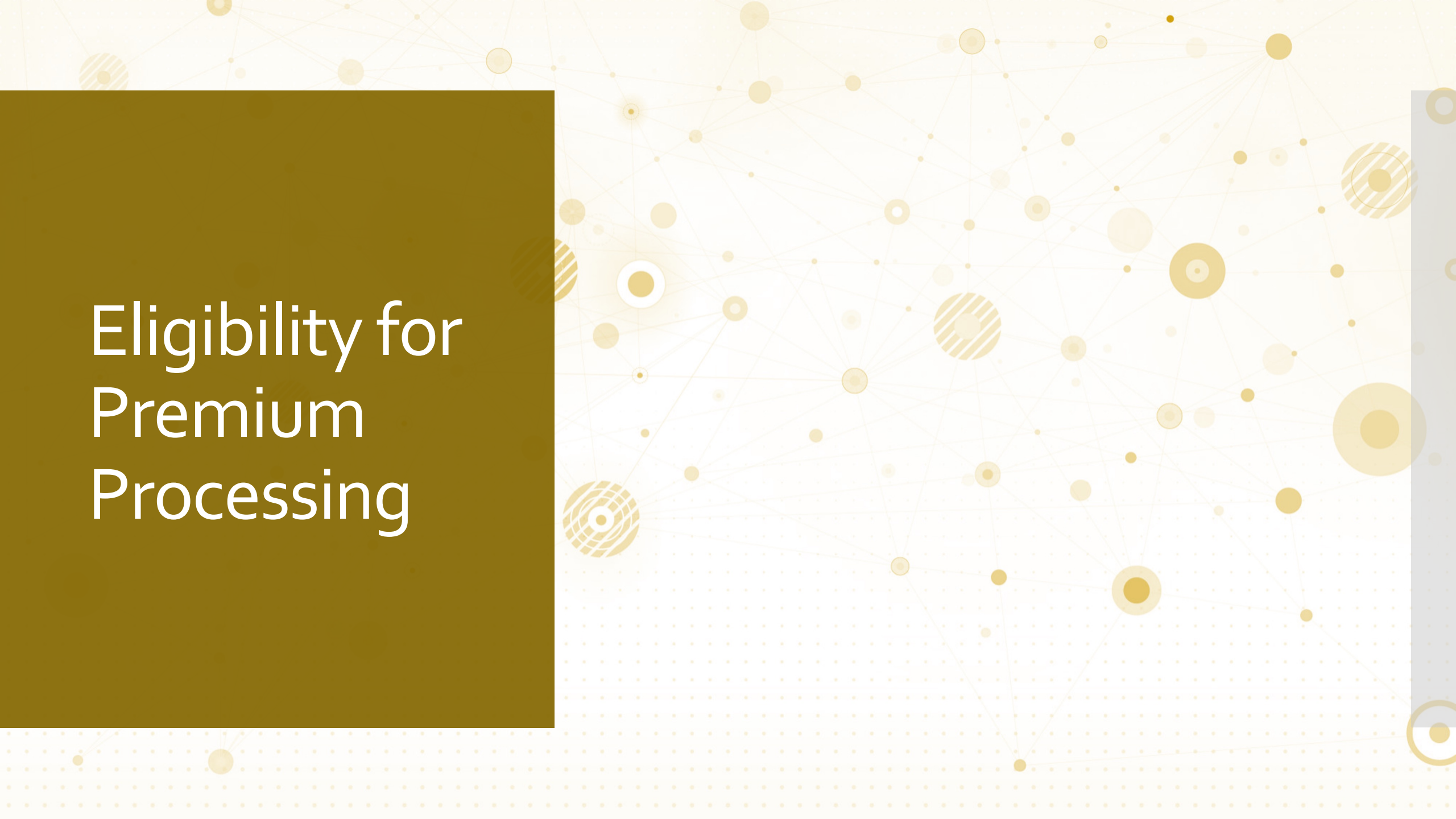
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E-1, E-2,  
E-3,

H-1B1

TN

File with DOS  
Direct Application with Consulate

The background features a complex network diagram with numerous nodes of varying sizes and colors (gold, white, grey) connected by thin lines. The nodes are scattered across the page, with some larger nodes having concentric circles or patterns. A dark olive green rectangular area is positioned on the left side, containing the title text. The overall color palette is warm, dominated by gold and olive green tones.

# Eligibility for Premium Processing

# Premium Processing – FASTER ANSWERS!

- Something that is unique to Employment Based Immigration is the ability to Premium Process Certain Visa Petitions with USCIS
  - Nonimmigrant
  - Immigrant
- USCIS GUARANTEES the adjudication of the visa application within a certain number of days.
- Does not affect the processing time at the consulate abroad.

# Eligible Nonimmigrant Visas

## Premium Processing of Form I-129

- **\$2,500 – 15 Calendar Days once all prerequisites have been met**
  - E-1, E-2, E-3, H-1B, H-3, L (including blanket L-1), O, P, Q, or TN nonimmigrant classification.
  - Initial applications, extensions and changes of status
- **\$1,500 – 15 Calendar Days once all prerequisites have been met**
  - H-2B or R nonimmigrant classification.
  - Initial applications, extensions and changes of status
- **\$1,750 – 30 Calendar Days once all prerequisites have been met**
  - For a pending Form I-539 seeking change of status to F-1, F-2, M-1, M-2, J-1, or J-2 nonimmigrant status.

# Eligible Immigrant Visas

## Premium Processing of Form I-140

- **\$2,500 – 45 Calendar Days once all requisites have been met**
  - Most are completed within 15-20 days
- Form I-140 requesting EB-1, EB-2, or EB-3 immigrant visa classification.
  - Always consider premium processing of the I-140 to start the 180 day clock after approval of Form I-140 - to allow a transfer of employment (in the event of termination of employment)
  - We will talk more about that next weekend!

## Other Eligible Premium Processing

- **\$1,500 – 30 Calendar Days once all requisites are met**
  - Form I-765 for F-1 Students OPT with eligibility category:
    - (C)(3)(A) – Pre Completion OPT
    - (C)(3)(B) – Post Completion OPT
    - (C)(3)(C) – STEM Extension OPT (24 Months)

# Form I-907

- Form I-907, Request for Premium Processing – Filing Fee depends visa or request type.
- File online (new) or by mail
- Who can Request Premium Processing
  - Petitioner
  - Beneficiary/Applicant
  - Attorney – Attorney, you should always be the requestor
- Email Notification of Acceptance with Receipt Number
- Evidence Needed – NONE!
  - Just have to be willing to pay!

Let's Look at  
Form  
I-907, Request  
for Premium  
Processing



# Obtaining the Visa After Approval of Petition



# Filing the Nonimmigrant Visa Application





# Scheduling the Interview

# Step 1 – Establish a NIV Application

Ds-160

# Consular Electronic Application Center

DOS – Consular Processing Center

<https://ceac.state.gov/ceac/>

# Application Information System

System Used for the Majority of Countries

<https://ais.usvisa-info.com/>

## Groups



### Current Status Schedule Appointment

Continue



**Document Delivery Location:** CARRETERA INTERNACIONAL – Carretera Internacional Km 1205 Nor te SN 0, Mazatlan, SINALOA Costa Brava 82128, MX — [view map](#)

Applicant Name

Passport

DS-160

Visa Class

[Redacted]

AA0 [Redacted]

B1/B2 Business & Tourism (Temporary visitor)



IVR Account Number:

[Redacted]

## Take action on this group of applicants:



Schedule Appointment



Update Delivery Location



Add Applicant



View Payment Receipt

## Take action on this group of applicants:



Schedule Appointment



Schedule your visa application appointment.

[Schedule Appointment](#)



To complete the application process, you must schedule and attend two appointments: Biometric (fingerprints and digital photograph) collection at CSRA's Applicant Service Center (ASC) and an interview at the Consular Section.

Warning: If the applicant fails to attend the ASC appointment, the Consular appointment will be automatically cancelled. The applicant will have to reschedule both appointments.

Schedule below.

#### Consular Section Appointment

Please select the Consular Section location where you will apply. The Consular Section location selected below must match the Consular Section location entered on the DS-160 Number form.

Consular Section Location \*

#### ASC Appointment

ASC Location\*

Please select the Consular Section location where you will apply. The Consular Section location entered on the DS-160 Number form.

Consular Section Location \*

- Ciudad Juarez
- Guadalajara
- Hermosillo
- Matamoros
- Merida
- Mexico City
- Monterrey
- Nogales
- Nuevo Laredo
- Tijuana

### Consular Section Appointment

Please select the Consular Section location where you will apply. The Consular Section location selected below must match the Consular Section location entered on the DS-160 Number form.

Consular Section Location \*

Mexico City

Date of Appointment \*

June 2025							July 2025						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7			1	2	3	4	5
8	9	10	11	12	13	14	6	7	8	9	10	11	12
15	16	17	18	19	20	21	13	14	15	16	17	18	19
22	23	24	25	26	27	28	20	21	22	23	24	25	26
29	30						27	28	29	30	31		

### Consular Address

Paseo de la Reforma # 305

Col. Cuauhtémoc, Del. Cuauhtémoc

Mexico City, 06500

Mexico

ASC Location\*

### Consular Section Appointment

Please select the Consular Section location where you will apply. The Consular Section location entered on the DS-160 Number form.

Consular Section Location \*

Mexico City

Date of Appointment \*

2025-07-23

Time of Appointment \*

10:45

**Consular Address**  
Paseo de la Reforma # 305  
Col. Cuauhtémoc, Del. Cuauhtémoc  
Mexico City, 06500  
Mexico

### Consular Section Appointment

Please select the Consular Section location where you will apply. The Consular Section location selected below must match the Consular Section location entered on the DS-160 Number form.

Consular Section Location \*

Mexico City

Date of Appointment \*

2025-07-23

Time of Appointment \*

10:45

#### Consular Address

Paseo de la Reforma # 305  
Col. Cuauhtémoc, Del. Cuauhtémoc  
Mexico City, 06500  
Mexico

### ASC Appointment

ASC Location \*

Ciudad Juarez ASC  
Guadalajara ASC  
Hermosillo ASC  
Matamoros ASC  
Merida ASC  
Mexico City ASC  
Monterrey ASC  
Nogales ASC  
Nuevo Laredo ASC  
Tijuana ASC

### ASC Appointment

ASC Location \*

Mexico City ASC

Date of Appointment \*

2025-07-16

Time of Appointment \*

12:10

#### ASC Address


Hamburgo # 213, PB Anexo  
Col. Juárez, Del. Cuauhtémoc  
MEXICO CITY, CDMX - Mexico City, Col. Juárez, 06600  
Mexico





**Current Status**  
**Attend Appointment**

[Continue](#)

 **Consular Appointment:** 10 July, 2023, 08:00 Mexico City local time at Mexico City — [get directions](#)

 **ASC Appointment:** 3 July, 2023, 07:40 MEXICO CITY local time at Mexico City ASC — [get directions](#)

 **Document Delivery Location:** CAS Ciudad de Mexico – Hamburgo # 213, PB Anexo Col. Juárez, Del., MEXICO CITY, CDMX - Mexico City Col. Juarez 06600, MX — [view map](#)

Applicant Name	Passport	DS-160	Visa Class	Status
[Redacted]	[Redacted]	AA00BE13VN	TN NAFTA Professional	<a href="#">Check DS-160 Status</a> 

IVR Account Number: [Redacted]



## Current Status Appointment

Continue



**ASC Appointment:** 28 December, 2020, 13:00 MEXICO CITY local time at Mexico City ASC — [get directions](#)



**Document Delivery Location:** CAS Ciudad de Mexico – Hamburgo # 213, PB Anexo Col. Juárez, Del., MEXICO CITY, CDMX - Mexico City Col. Juarez 06600, MX — [view map](#)

Applicant Name

Passport

DS-160

Visa Class

Status

[Redacted]

TN NAFTA  
Professional

MEX-NIV-A-1-02-MRV-24-DIC-20-  
17947284  
*Picked up*



IVR Account Number:

[Redacted]



B-2 Visitor / Tourism

## B-2 Visitor's Visa

- The B-2 Visa Process begins with the creation of the DS-160 Application and Payment of NIV Fees.
  - Some countries you have to pay at a bank in that country (payment slip will be generated)
  - Some countries allow you to pay on line.
- You do not have to complete the DS-160 right away, but you do have to access the application at least once every 30 days so the application is not terminated.



# Interview Packet – B-2 Visa

Let's Examine the Cover  
Letter to Understand the  
contents.



# B-1 Domestic Employee

# B-1 Domestic Employee of Non Immigrant Visa Holder

- Personal or domestic servants who are accompanying or following an employer to the United States may be eligible for B-1 visas.
- This category of domestic employees includes, but is not limited to, cooks, butlers, chauffeurs, housemaids, valets, footmen, nannies, mothers' helpers, gardeners, and paid companions.
- Those accompanying or following to join an employer who is a foreign diplomat or government official may be eligible for an A-3 or G-5 visa, depending upon their employer's visa status.

# B-1 Domestic Employee of Non Immigrant Visa Holder

- The purpose of the beneficiary's trip is to enter the United States for work as a domestic employee
- Beneficiary plans to remain in the United States for a specific, limited period of time
- Beneficiary's employer meets certain qualifications
- Beneficiary has evidence of compelling social and economic ties abroad
- Beneficiary has a residence outside the United States as well as other binding ties that will ensure you return abroad at the end of your contract.

# B-1 Domestic Employee of Non Immigrant Visa Holder

- Domestic employees can accompany or join an employer who holds a B, E, F, H, I, J, L, M, O, P, Q, or R nonimmigrant visa.
- The employer ordinarily resides outside the U.S. and is traveling to the U.S. temporarily;
- The employee has a residence abroad which he or she has no intention of abandoning;
- The employer-employee relationship has existed for at **least six months prior to the employer's admission to the U.S.**
  - Alternatively, the employer can show they regularly employ a domestic employee in the same capacity as the intended applicant while abroad;
- The employee can demonstrate at least one-year experience as a personal employee or domestic worker by producing statements from previous employers attesting to such experience.
  - These statements are typically in the form of employment contracts or confirmation letters; and
- The employee has an employment contract that has been signed and dated by the employer and employee and includes all requisite provisions.

# B-1 Domestic Employees

## Employment Contract

- The employee must be able to present a valid employment contract.
- The contract must include specific provisions, including (but not limited to) the following:
  - The employee will receive the greater of the minimum or prevailing wage under U.S. federal, state, or local law for an eight-hour workday;
    - Utilize the DOL BLS OOH or the Prevailing Wage Database.
  - The employer will provide the employee with free room and board in the U.S. and roundtrip airfare;
  - ***A certification that both parties understand that the employee cannot be required to remain on the premises after working hours without compensation;***
  - The employer will be the only provider of employment to the employee;
  - The employment contract must reflect any other benefits normally required for U.S. domestic workers in that area of employment.

A stack of brown paper folders with green tabs is shown on a wooden surface. The folders are slightly offset, creating a sense of depth. The background is a warm, yellowish light.

# The Interview Packet

Let's Look at the cover to discuss the packet

# Department of Labor

Bureau of Labor Statistics

Prevailing Wage Database

Department of  
Labor

BLS &  
Foreign Labor  
Data (PWD  
Database)

- <https://www.bls.gov/bls/blswage.htm>
- [FLCDataCenter.com](http://FLCDataCenter.com)



# Contract Sample

Sample will be provided in  
Materials

# Domestic Employee Application Process

# B-1 Domestic Employee

- Start / Generate a new DS-160
- Make the Visa Payment (per country instructions)
- Complete DS-160
- Remember to print the ds-160 for the client's reference (they do not take this to the interview) – YOU ONLY GET ONE CHANCE!
- Prepare the Interview Packet



# E-1 Treaty Trader

EB

## Nonimmigrant Visas

### E-1 Treaty Traders

- The E-1 nonimmigrant classification allows a national of a treaty country (*a country with which the United States maintains a treaty of commerce and navigation*) to be admitted to the United States solely to engage in international trade on his or her own behalf.
- Certain employees of such a person or of a qualifying organization may also be eligible for this classification. (*For dependent family members, see “Family of E-1 Treaty Traders and Employees”.*)
- See [U.S. Department of State's Treaty Countries](#) for a current list of countries with which the United States maintains a treaty of commerce and navigation.

# EB Nonimmigrant Visas

## E-1 Treaty Traders

- Who May File for Change of Status to E-1 Classification
- If the treaty trader is currently in the United States in a lawful nonimmigrant status, he or she may file Form I-129 to request a change of status to E-1 classification.
- If the desired employee is currently in the United States in a lawful nonimmigrant status, the qualifying employer may file Form I-129 on the employee's behalf.

# EB Nonimmigrant Visas

## E-1 Treaty Traders

- Be a national of a country with which the United States maintains a treaty of commerce and navigation.
  - Carry on substantial trade.
  - Carry on principal trade between the United States and the treaty country which qualified the treaty trader for E-1 classification.

# EB Nonimmigrant Visas

## E-1 Treaty Traders

- Trade is the existing international exchange of items of trade for consideration between the United States and the treaty country. Items of trade include but are not limited to:
  - Goods
  - Services
  - International banking
  - Insurance
  - Transportation
  - Tourism
  - Technology and its transfer
  - Some news-gathering activities.
- See 8 CFR 214.2(e)(9) for additional examples and discussion.

# EB Nonimmigrant Visas

## E-1 Treaty Traders

- Substantial trade generally refers to the continuous flow of sizable international trade items, involving numerous transactions over time.
  - There is no minimum requirement regarding the monetary value or volume of each transaction.
  - While monetary value of transactions is an important factor in considering substantiality, greater weight is given to more numerous exchanges of greater value.
  - 8 CFR 214.2(e)(10) for further details.
- Principal trade between the United States and the treaty country exists when over 50% of the total volume of international trade is between the U.S. and the trader's treaty country.
  - See 8 CFR 214.2(e)(11).

# EB Nonimmigrant Visas

## E-1 Treaty Traders

- General Qualifications of the Employee of a Treaty Trader
  - Be the same nationality of the principal alien employer (who must have the nationality of the treaty country)
  - Meet the definition of “employee” under the relevant law
  - Either be engaging in duties of an executive or supervisory character, or if employed in a lesser capacity, have special qualifications.

# EB Nonimmigrant Visas

## E-1 Treaty Traders

- Special qualifications are skills which make the employee's services essential to the efficient operation of the business.
- These include, but are not limited to:
  - The degree of proven expertise in the employee's area of operations
  - Whether others possess the employee's specific skills
  - The salary that the special qualifications can command
  - Whether the skills and qualifications are readily available in the United States
- Knowledge of a foreign language and culture does not, by itself, meet this requirement

# EB Nonimmigrant Visas

## E-1 Treaty Traders

- Period of Stay:
  - Qualified treaty traders and employees will be allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each.
    - There is no maximum limit to the number of extensions an E-1 nonimmigrant may be granted.
  - All E-1 nonimmigrants, however, ***must maintain an intention to depart the United States*** when their status expires or is terminated.
  - An E-1 nonimmigrant who travels abroad may generally be granted an automatic two-year period of readmission when returning to the United States.
    - It is generally not necessary to file a new Form I-129 with USCIS in this situation.



# E-2 Treaty Investors

EB  
Nonimmigrant  
Visas

E-2 Treaty  
Traders

- The E-2 nonimmigrant classification allows a national of a treaty country (a country with which the United States maintains a treaty of commerce and navigation) to be admitted to the United States when investing a *substantial amount of capital in a U.S. business*.
- Certain employees of such a person or of a qualifying organization may also be eligible for this classification. (For dependent family members, see “Family of E-2 Treaty Investors and Employees” below.)
- See U.S. Department of State's Treaty Countries for a current list of countries with which the United States maintains a treaty of commerce and navigation

# EB Nonimmigrant Visas

## E-2 Treaty Traders

- To qualify for E-2 classification, the treaty investor must:
  - Be a national of a country with which the United States maintains a treaty of commerce and navigation
  - Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States
  - Be seeking to enter the United States solely to develop and direct the investment enterprise.
    - This is established by showing at least 50% ownership of the enterprise or possession of operational control through a managerial position or other corporate device.
- An investment is the treaty investor's placing of capital, including funds and/or other assets, at risk in the commercial sense with the objective of generating a profit.
  - The capital must be subject to partial or total loss if the investment fails.
  - The treaty investor must show that the funds have not been obtained, directly or indirectly, from criminal activity. See 8 CFR 214.2(e)(12) for more information.

# EB Nonimmigrant Visas

## E-2 Treaty Traders

- A substantial amount of capital is:
  - Substantial in relationship to the total cost of either purchasing an established enterprise or establishing a new one
  - Sufficient to ensure the treaty investor's financial commitment to the successful operation of the enterprise
  - Of a magnitude to support the likelihood that the treaty investor will successfully develop and direct the enterprise.
  - The lower the cost of the enterprise, the higher, proportionately, the investment must be to be considered substantial.
- A bona fide enterprise refers to a real, active and operating commercial or entrepreneurial undertaking which produces services or goods for profit.
  - It must meet applicable legal requirements for doing business within its jurisdiction.

# EB Nonimmigrant Visas

## E-2 Treaty Traders

- **General Qualifications of the Employee of a Treaty Investor:**
  - To qualify for E-2 classification, the employee of a treaty investor must:
    - Be the same nationality of the principal alien employer (who must have the nationality of the treaty country)
    - Meet the definition of “employee” under relevant law
    - Either be engaging in duties of an executive or supervisory character; or
    - If employed in a lesser capacity, have special qualifications.

# EB Nonimmigrant Visas

## E-2 Treaty Traders

### Period of Stay:

- Qualified treaty investors and employees will be allowed a maximum initial stay of two years.
- Requests for extension of stay may be granted in increments of up to two years each.
- There is no maximum limit to the number of extensions an E-2 nonimmigrant may be granted.
  - All E-2 nonimmigrants, however, must maintain an intention to depart the United States when their status expires or is terminated.
- An E-2 nonimmigrant who travels abroad may generally be granted an automatic two-year period of readmission when returning to the United States.
  - It is generally not necessary to file a new Form I-129 with USCIS in this situation.

# EB Nonimmigrant Visas

## E-1/E-2 Application Mexico

- E-1 and E-2 Visas are more complex nonimmigrant applications
- Application can be Initiated in the U.S. or with the Consulate
- E-1 and E-2 Visas are issued ONLY in Mexico City and Ciudad Juarez
- Stringent Evidence Submission Requirements

# EB Nonimmigrant Visas

## E-1/E-2 Application Mexico City

- E-1/E-2 Visa Applications in Mexico City are 100% electronic.
- Step 1 – Complete Form DS-156E
  - Do this first, it will help with the completion of the DS-160
- Step 2 – Complete Form DS-160
  - The E-2 DS-160 is VERY different than the DS-160 for other nonimmigrant visas
- Complete the DS-156E and DS-160 very carefully to avoid delays

# EB Nonimmigrant Visas

## E-1/E-2 Application Mexico City

- Step 3 – Prepare the Actual Application Packet
- The rules and guidelines on how to prepare the packet are VERY specific.
- Everything MUST be in a SPECIFIC order – no exceptions
  - Tabs A – H ONLY
  - Documents must be in the exact order under each tab as provided by the instructions
- Page Limit = 100 pages
- Step 4 – Submit the Application Packet via email to the appropriate consulate.



# Let's Look at the E-2 Visa Instructions

# Labor Conditions Application for Certain NIV

- To obtain an LCA, the employer needs to file an ETA 9035 online through .
- Employers should not file an LCA more than 6 months before they expect their new employee to start the position. LCA is only required if your petition is selected for filing. All LCA applications are submitted electronically through the FLAG system, with two exceptions being physical disability or lack of internet access. To mail your LCA application, you will have to receive permission from the Administrator of OFLC.



# H-1B Visa

Specialty Occupations

# About the H-1B Visa

- The H-1B visa provides the opportunity for foreign professionals to work in the United States.
- It allows employers to hire qualified foreign workers in the U.S. in specialty occupations on a temporary basis.
- The foreign professional has the possibility to obtain a U.S. position based on his/her acquired skills.
- In order to be eligible for the H-1B Visa, the U.S. employer and potential employee are obligated to adhere to the strict USCIS conditions and regulations.
- The H-1B visa requirements strive to ensure that the U.S. employer and foreign professional comply with the Department of Labor standards. A major part of this compliance is filing for a Labor Condition Application (LCA).

# EB Nonimmigrant Visas

## H-1B Specialty Occupations

- The job must meet one of the following criteria to qualify as a specialty occupation:
  - Bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position
  - The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree
  - The employer normally requires a degree or its equivalent for the position
  - The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.\*

# EB Nonimmigrant Visas

## H-1B Specialty Occupations

- To qualify to accept a job offer in a specialty occupation applicant must meet one of the following criteria:
  - Have completed a U.S. bachelor's or higher degree required by the specific specialty occupation from an accredited college or university
  - Hold a foreign degree that is the equivalent to a U.S. bachelor's or higher degree in the specialty occupation, or extensive work experience (Usually 3 years work = 1 year of study)
  - Hold an unrestricted state license, registration, or certification which authorizes applicant to fully practice the specialty occupation and be engaged in that specialty in the state of intended employment
  - Have education, training, or progressively responsible experience in the specialty that is equivalent to the completion of such a degree, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

## EB Nonimmigrant Visas

## H-1B Specialty Occupations

- This visa is also used for Department of Defense Employees and Fashion Models
  - Department of Defense applications are handled by the DOD
- You might handle a Fashion Model Application
  - Fashion Models must be of distinguished merit and ability

# H-1B Season

January 1 – July 30

Each Year

# H-1B Season

January 1 – July 30  
Each Year

## January and February

- Potential H-1B applicants are job hunting / looking for sponsor
- Employers seeking to hire specialty workers are recruiting potential H-1B applicants
- Colleges
- International Headhunters

## March 1 – March 15-20<sup>th</sup>

- H-1B Lottery Registration (Dates are announced in advance each year)
- Close of registration – March 30<sup>th</sup> – USCIS selects the lottery winners that can apply for an H-1B visa

## April 1 – July 30 (90 Days)

- Employer's can file their petitions
- Beneficiaries of approved petitions then file their NIV
- Close of Season – July 30

## October 1<sup>st</sup>

- First date employment is Authorized

# H-1B Lottery

# H-1B Lottery Registrations

- Due to the volume of H-1b Applications, USCIS implemented a lottery
- 65,000 H-1b visas are allotted each fiscal year (6,500 to Chile and Singapore)
- Employers must register their employees during the Lottery Registration Period
- March 1 – 17 for 2023
- Employees cannot register themselves unless it is for self employment – their business – start up, etc.
- USCIS randomly selects who can apply

# H-1B Lottery Registrations

- Employers can submit only 1 registration per employee.
- Employees with more than 1 Job Offer can be registered by multiple employers
- Employers who register the same employee more than 1 time (trying to increase the odds of selection will be disqualified)
- Cost \$10

# EB Nonimmigrant Visas H-1B Specialty Occupations

- Application Process after Lottery Selection:
- Step 1: Employer Submits LCA to DOL for certification.
  - The employer must apply for and receive DOL certification of an LCA.
- Step 2: Employer Submits Completed Form I-129 and H Supplement to USCIS.
- The employer should file Form I-129, Petition for a Nonimmigrant Worker, with the correct USCIS Service Center.
  - The DOL-certified LCA must be submitted with the Form I-129.

# EB Nonimmigrant Visas

## H-1B Specialty Occupations

- Labor Condition Application (LCA)
  - Prospective specialty occupation and distinguished fashion model employers must obtain a certification of an LCA from the DOL.
  - This application includes certain attestations, a violation of which can result in fines, bars on sponsoring nonimmigrant or immigrant petitions, and other sanctions to the employer.

# EB Nonimmigrant Visas H-1B Specialty Occupations

- Labor Condition Application (LCA)
- The application requires the employer to attest that it will comply with the following labor requirements:
  - The employer will pay the beneficiary a wage which is no less than the wage paid to similarly qualified workers or, if greater, the prevailing wage for your position in the geographic area in which you will be working.
  - The employer will provide working conditions that will not adversely affect other similarly employed workers.
  - At the time of the labor condition application there is no strike or lockout at the employer place of business.
  - Notice of the filing of the labor condition application with the DOL has been given to the union bargaining representative or has been posted at the place of business.

# I-129 and H- Supplement \$\$\$\$\$

- Form I-129 – Filing Fee \$460 (employer required to pay)
- Form I-907 – Filing Fee \$2500 (employer OR employee can pay)
- Fraud Detection Fee - \$500.00 (certified funds – employer required to pay)
- Form DS-260 – Filing Fee \$190.00 (employer or employee can pay)
- Visa Reciprocity Fee - \$42 for 1 year | \$237 for 3 years (employer or employee can pay)
- American Competitiveness Act Fees (employer required to pay)
  - Does not apply to amendment or extensions filed for same employee by the same employer
  - Less than 24 employees - \$750
  - 25 – 49 employees - \$1500
  - 50+ - \$4000

# EB Nonimmigrant Visas

## H-1B Specialty Occupations

- Application Process:
- Step 3: Prospective Workers Outside the United States Apply for Visa and/or Admission.
  - Once the Form I-129 petition has been approved, the prospective H-1B worker who is outside the United States may apply with the U.S. Department of State (DOS) at a U.S. embassy or consulate abroad for an H-1B visa.
    - Form DS-160

# EB Nonimmigrant Visas

## H-1B Specialty Occupations

### Period of Stay:

- As an H-1B nonimmigrant may be admitted for a period of up to three years. Time period may be extended, but generally cannot go beyond a total of six years.
  - Some exceptions do apply under sections 104(c) and 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21).
- The **employer** will be liable for the reasonable costs of the visa holder's return transportation if the employer terminates employment before the end the period of authorized stay.
- Employers are not responsible for the costs of your return transportation if visa holder voluntarily resigns.

# EB Nonimmigrant Visas

## H-1B Specialty Occupations

- H-1B Cap (Cannot file until April 1<sup>st</sup> each year)
- The H-1B visa has an annual numerical limit "cap" of 65,000 visas each fiscal year.
  - The first 20,000 petitions filed on behalf of beneficiaries with a U.S. master's degree or higher are exempt from the cap.
  - H-1B workers who are petitioned for or employed at an institution of higher education or its affiliated or related nonprofit entities or a nonprofit research organization, or a government research organization are not subject to this numerical cap. (H-1B Exempt")
- H-1B Visa Holder cannot start working until the start of the Fiscal Year.
- DHS/DOS Fiscal Year is October 1 – September 30

# EB Nonimmigrant Visas

## H-1B Specialty Occupations

- H-1B season
- Every year, the deadline for filing an H-1B is April 1, and the earliest possible date a foreign worker could start employment is October 1.
- H-1B “season” is the time of year leading up to the April 1 deadline when employers are preparing their H-1B visa petitions.
  - Most companies start this process in January or early February.

# EB Nonimmigrant Visas

## H-2A Agricultural Workers

- The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs.

# EB Nonimmigrant Visas

## H-2A Agricultural Workers

- To qualify for H-2A nonimmigrant classification, the petitioner must:
  - Offer a job that is of a temporary or seasonal nature.
  - Demonstrate that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work. (LCA)
  - Show that employing H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
  - Generally, submit a single valid temporary labor conditions certification from the U.S. Department of Labor with the H-2A petition. (A limited exception to this requirement exists in certain “emergent circumstances.”
    - See e.g., 8 CFR 214.2(h)(5)(x) for specific details.)

# EB Nonimmigrant Visas

## H-2A Agricultural Workers

- Application Process
  - Submit a Temporary Labor Conditions Application to the DOL
  - Upon approval of Temporary LCA, Submit Form I-129 to USCIS
  - Apply for a Nonimmigrant Visa at US Embassy or Consulate
- List of eligible countries is on the USCIS website

EB  
Nonimmigrant  
Visas  
H-2A Agricultural  
Workers

- Period of Stay
  - Visa granted for 1 year
  - Can be renewed up to 3 years max
  - After 3 years, must return to their country of origin for 3 months before returning to the U.S.

# L-1A / L-1B Visas

# EB Nonimmigrant Visas

## L1-A, Intercompany Transferee Manager or Executive

- The L-1A nonimmigrant classification enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States.
- This classification also enables a foreign company which does not yet have an affiliated U.S. office to send an executive or manager to the United States with the purpose of establishing one.

# EB Nonimmigrant Visas

## L1-A, Intercompany Transferee Manager or Executive

- **General Requirements:**
  - Have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as qualifying organizations); and
  - Currently be, or will be, doing business as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-1.
  - While the business must be viable, there is no requirement that it be engaged in international trade.

# EB Nonimmigrant Visas

## L1-A, Intercompany Transferee Manager or Executive

- Period of Stay
  - Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year.
    - All other qualified employees will be allowed a maximum initial stay of three years.
- For all L-1A employees, requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the **maximum limit of seven years**.

# EB Nonimmigrant Visas

## L1-B, Intercompany Transferee Specialized Knowledge

- The L-1B nonimmigrant classification enables a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization's interests from one of its affiliated foreign offices to one of its offices in the United States.
- This classification also enables a foreign company which does not yet have an affiliated U.S. office to send a specialized knowledge employee to the United States to help establish one.

# EB Nonimmigrant Visas

## L1-B, Intercompany Transferee Specialized Knowledge

- To qualify for L-1 classification in this category, the employer must:
  - Have a qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate, collectively referred to as qualifying organizations); and
  - Currently be, or will be, doing business as an employer in the United States and in at least one other country directly or through a qualifying organization for the duration of the beneficiary's stay in the United States as an L-1.
  - While the business must be viable, there is no requirement that it be engaged in international trade.

# EB Nonimmigrant Visas

## L1-B, Intercompany Transferee Specialized Knowledge

- To qualify, the named employee must also:
  - Generally have been working for a qualifying organization abroad for one continuous year within the three years immediately preceding his or her admission to the United States; and
  - Be seeking to enter the United States to provide services in a *specialized knowledge* capacity to a branch of the same employer or one of its qualifying organizations.

# EB Nonimmigrant Visas

## L1-B, Intercompany Transferee Specialized Knowledge

- Specialized knowledge means:
  - Either special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management; or
  - Other interests and its application in international markets; or
  - An advanced level of knowledge or expertise in the organization's processes and procedures (See 8 CFR 214.2(l)(1)(ii)(D)).

# EB Nonimmigrant Visas

## L1-B, Intercompany Transferee Specialized Knowledge

- L-1 Visa Reform Act of 2004
- The L-1 Visa Reform Act of 2004 applies to all petitions filed on or after June 6, 2005, and is directed particularly to those filed on behalf of L-1B employees who will be stationed primarily at the worksite of an of an employer *other than the petitioning employer* or its affiliate, subsidiary, or parent.

# EB Nonimmigrant Visas

## L1-B, Intercompany Transferee Specialized Knowledge

- L-1 Visa Reform Act of 2004
- In order for the employee to qualify for L-1B classification in this situation, the petitioning employer must show that:
  - The employee will not be principally controlled or supervised by such an unaffiliated employer; and
  - The work being provided by the employee is not considered to be labor for hire by such an unaffiliated employer.
- See INA 214(c)(2)(F) and Chapter 32.3(c) of the USCIS Adjudicator's Field Manual, available in the "Laws" section of the USCIS website.

# EB Nonimmigrant Visas

L1-B,  
Intercompany  
Transferee  
Specialized  
Knowledge

- Period of Stay
  - Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year.
    - All other qualified employees will be allowed a maximum initial stay of three years.
  - For all L-1B employees, requests for extension of stay may be granted in increments of up to an additional two years, until the employee has reached the **maximum limit of five years**.

# L-1 Visas - Purpose

- ▶ The L-1A intra-company transferee visa allows executives, managers to a U.S. office, subsidiary, or affiliated company to perform temporary services
- ▶ The L-1B allows employees with specialized skills to transfer from the foreign company to a U.S. office, subsidiary, or affiliated company to perform temporary services

# Advantages of L-1 Visas

- ▶ Processing Time
  - ▶ The Immigration Service usually decides petitions in 60-90 days.
  - ▶ Eligible for Premium Processing
- ▶ Duration
  - ▶ L-1 visas are granted initially for 1 year for new offices and up to 3 years for existing offices with extensions available in 4-year increments, with a total stay not to exceed 7 years.
- ▶ Permission to Work in the U. S.
  - ▶ The intra-company transferee is allowed to work for the U.S. subsidiary or affiliate company.
- ▶ Includes Spouse & Children
  - ▶ The spouse and children under 21 are allowed to accompany the L-1 visa holder during the period of the transferee status.
- ▶ Conversion to Permanent Residence
  - ▶ In limited circumstances, it may be possible to convert the L-1 visa for executives and managers to lawful permanent residence status.

# Basic Requirements

- ▶ Previous Employment
  - ▶ The applicant must have been employed by the foreign Parent, Subsidiary or Affiliate for at least 12 months during the three-year period immediately prior to filing the L-1 visa application.
- ▶ Capacity of Employment (Past)
  - ▶ The applicant must have been employed as an executive, manager, or as a specialized skill worker for a minimum of twelve months during the three years immediately preceding the filing of the L-1 visa petition.
- ▶ Capacity of Employment (Future)
  - ▶ The applicant be employed as an executive, manager, or as a specialized skill worker for the same company, or its U.S. subsidiary or affiliate.
- ▶ Intra-Company Relationship
  - ▶ The current (foreign) and prospective (U.S.) companies must be either the same company, or related by subsidiary or affiliate ownership.

# Limitations

- ▶ Seven-year Limitation
  - ▶ L-1 visas may not be extended beyond a total of seven years.
- ▶ New employees Excluded
  - ▶ New employees may not be transferred prior to serving one year abroad as an executive, manager, or specialized skill employee of the foreign parent company.
- ▶ Foreign Company's Existence
  - ▶ There must be continual existence of the foreign company during the transferee's stay in the U.S.
- ▶ Spouse & Children
- ▶ Spouses CAN obtain employment authorization, but children of age to work are allowed to reside in the U.S. but are NOT allowed to be employed.
- ▶ Intra - Company Relations Continue
  - ▶ L-1 visa holders may remain only as long as the U.S. company qualifies as the same company or subsidiary or affiliate status with the foreign company.

# Business Entities

CORRELATING THE  
RELATIONSHIP BETWEEN THE  
FOREIGN & US COMPANY

# Qualifying Business Entities

- ▶ Immigration law considers two related concepts, ownership and control, as the determining factors for establishing a qualifying relationship between business entities.
- ▶ **Ownership** refers to the legal right of possession with full power over a business entity.
- ▶ **Control** refers to the right and authority to direct the management and operations of that business entity.
- ▶ The first step in determining whether a U.S. company and foreign entity have a qualifying relationship,
  - ▶ Does a relationship of ownership and control exist between two legal business entities.

# U.S. Petitioning Company

- ▶ A U.S. entity petitioning for an L-1 visa must be a:
- ▶ **Parent;**
- ▶ **Branch;**
- ▶ **Subsidiary; or**
- ▶ **Affiliate**

Of the Foreign entity

# Parent Company

- ▶ A parent refers to a firm, corporation, or other legal entity that has subsidiaries. In the immigration context, this could mean one of two scenarios:
  - ▶ A foreign entity owns more than 50 percent of a U.S. entity and is therefore a majority owner of the U.S. entity.
- ▶ For example, a large technology company in India owns more than half of a smaller, related U.S. company.
  - ▶ A U.S. entity owns more than 50 percent of a foreign entity and is therefore a majority owner of the foreign entity.
- ▶ For example, a large American company owns more than half of a Chinese computer company.

# Branch

- ▶ A branch is defined as an operating division or office of the same organization housed in a different location.
- ▶ This corporate structure is essentially a foreign business doing business in the U.S. The office **is not a separate entity**.
- ▶ Most people are familiar with the concept of a branch, and the purpose of one is fairly obvious: a company might have branches of their business located in many countries throughout the world and accordingly may manifest a need to transfer employees between them.

# Subsidiary

- ▶ A subsidiary is a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and therefore has control of the entity;
  - ▶ or owns directly or indirectly half of the entity and controls the entity;
  - ▶ or owns 50 percent of a 50/50 joint venture and has equal control of and veto power over the entity as does the other half of ownership;
  - ▶ or owns less than half of the entity, but in fact controls the entity.
- ▶ -To make the abstract definition above a little clearer, consider this example:
  - ▶ Chinese company A holds 49 percent of U.S. company B's stock. The remaining 51 percent is divided among another 10 investors, with none holding more than 10 percent individually.
  - ▶ Company B, a subsidiary, is a qualifying business entity under the L-1 visa category because company A, its parent, has actual control over company B.

# Affiliate

- ▶ An affiliate refers to one of the following:
  - ▶ One of two subsidiaries, both of which are owned and controlled by the same parent or individual; or
  - ▶ One of two legal entities owned and controlled by the same group of individuals, with each individual owning and controlling approximately half the same share or proportion of each entity.

# Contractual Relationships

- ▶ A contractual relationship (i.e. licensing or franchising) is generally not sufficient to establish the necessary relationship for an L-1 visa.

Initial Length of Stay

HOW LONG IS THE VISA ISSUED  
FOR

# New Offices

- ▶ The foreign affiliate can transfer their managers and executives to the U.S. to establish a “new office.”
- ▶ A company that has been doing business (operating) for less than 1 year is considered to be a “new office.”
- ▶ An L – Visa for a “new office” is initially granted only a 1-year visa.

# Existing Offices

- ▶ The foreign affiliate can transfer their managers and executives to the U.S. to an existing office.
- ▶ A company that has been doing business (operating) for more than 1 year is considered to be an “existing office.”
- ▶ An L – Visa for a “existing office” is initially granted only a 3-year visa.
- ▶ Renewal can be for a period up to 4 years.

# Executives and Managers

Intracompany Transfers

# Managerial Capacity

As is self-evident, an L-1A visa beneficiary should hold a **managerial** or **executive** position. How does immigration law define these terms, though?

- ▶ A **managerial capacity** refers to a position defined by the following primary duties:
  - ▶ Managing an organization, department, subdivision, function, or component; or managing an essential function within an organization, or department or subdivision of an organization
  - ▶ Supervising and controlling the work of other supervisory, professional, or managerial employees
  - ▶ Possessing the authority to hire and fire or recommend personnel actions (if other employees are directly supervised); and/or
  - ▶ Exercising discretion over day-to-day operations of the activity or function.
- ▶ First-line supervisors are usually not considered managers for L-1A visa purposes unless the employees they supervise are professionals. For example, a junior supervisor in an accounting firm may qualify as an L-1A manager since the employees she oversees are professional accountants.

# Executive Capacity

- ▶ An **executive position** is one in which the employee primarily:
  - ▶ Directs the management of an organization or a major component or function;
  - ▶ Establishes goals and policies;
  - ▶ Exercises wide latitude in discretionary decision-making; and
  - ▶ Receives only general supervision or direction from higher-level executives, a board of directors, or stockholders.



# TITLE OF THE POSITION IS IRRELEVANT

It is the job duties that matter

L-1B Visa

SPECIALIZED KNOWLEDGE

# Employee Specialized Knowledge

- ▶ An **employee with specialized knowledge** is an individual who possesses knowledge about a company's **products and services** and whose travel to the U.S. serves to impart said specialized knowledge onto the company's U.S. employees.
- ▶ An alternative qualifying position for L-1B purposes is when a company lacks an office in the U.S. and desires to send to the U.S. an employee with specialized knowledge of the company **in order to establish a presence in the U.S.**

# Managerial Capacity

- ▶ As is self-evident, an L-1A visa beneficiary should hold a managerial or executive position. How does immigration law define these terms, though?
- ▶ A managerial capacity refers to a position defined by the following primary duties:
  - ▶ Managing an organization, department, subdivision, function, or component; or managing an essential function within an organization, or department or subdivision of an organization
  - ▶ Supervising and controlling the work of other supervisory, professional, or managerial employees
  - ▶ Possessing the authority to hire and fire or recommend personnel actions (if other employees are directly supervised); and/or
  - ▶ Exercising discretion over day-to-day operations of the activity or function.



O Visas

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- The O-1 nonimmigrant visa is for the individual who possesses extraordinary ability in the:
  - Sciences;
  - Arts;
  - Education;
  - Business;
  - Athletics; OR
  - Has a demonstrated record of extraordinary achievement in the motion picture or television industry;
- Has been recognized nationally or internationally for those achievements.

# EB Nonimmigrant Visas

## O Visas, Individuals with Extraordinary Ability or Achievement

- The O nonimmigrant classification is commonly referred to as:
  - O-1A: individuals with an extraordinary ability in the sciences, education, business, or athletics (*not including the arts, motion pictures or television industry*)
  - O-1B: individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry
  - O-2: individuals who will accompany an O-1, artist or athlete, to assist in a specific event or performance.
    - *For an O-1A, the O-2's assistance must be an "integral part" of the O-1A's activity.*
    - *For an O-1B, the O-2's assistance must be "essential" to the completion of the O-1B's production.*
    - *The O-2 worker has critical skills and experience with the O-1 that cannot be readily performed by a U.S. worker and which are essential to the successful performance of the O-1*
  - O-3: individuals who are the spouse or children of O-1's and O-2's

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- General Eligibility Criteria
- To qualify for an O-1 visa, the beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.
- Extraordinary ability in the fields of science, education, business or athletics means a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor.

EB  
Nonimmigrant  
Visas  
O-1 Visa,  
Individuals with  
Extraordinary  
Ability or  
Achievement

- General Eligibility Criteria
- Extraordinary ability in the field of arts *means distinction*.
  - Distinction means a high level of achievement in the field of the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.
- To qualify for an O-1 visa in the motion picture or television industry, the beneficiary must demonstrate extraordinary achievement.
  - Extraordinary achievement is evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent the person is recognized as outstanding, notable or leading in the motion picture and/or television field.

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- Application Process O-1 Visa
- The petitioner (employer) should file Form I-129, Petition for Nonimmigrant Worker.
- The petition may not be filed more than one year before the actual need for the alien's services. To avoid delays, the Form I-129 should be filed at least 45 days before the date of employment.

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:
  - Consultation
    - A written advisory opinion from a peer group (including labor organizations) or a person with expertise in the beneficiary's area of ability.
    - If the O-1 petition is for an individual with extraordinary achievement in motion picture or television, the consultation must come from an appropriate labor union and a management organization with expertise in the beneficiary's area of ability.

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:
  - Exceptions to the Consultation Requirement
    - If the petitioner can demonstrate that an appropriate peer group, including a labor organization, does not exist, then the decision will be based on the evidence of record.
    - A consultation may be waived for an alien with extraordinary ability in the field of arts if the alien seeks readmission to perform similar services within 2 years of the date of a previous consultation.
    - Petitioners should submit a waiver request and a copy of the previous consultation with the petition.

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:
  - Contract between petitioner and beneficiary
  - A copy of any written contract between the petitioner and the beneficiary or a summary of the terms of the oral agreement under which the beneficiary will be employed.
    - NOTE: USCIS will accept an oral contract, as evidenced by the summation of the elements of the oral agreement. Such evidence may include but is not limited to:
      - emails between the contractual parties
      - a written summation of the terms of the agreement
      - any other evidence which demonstrates that an oral agreement was created.

# EB Nonimmigrant Visas

O-1 Visa,  
Individuals with  
Extraordinary  
Ability or  
Achievement

- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:
  - The summary of the terms of the oral agreement must contain:
    - what was offered by the employer
    - what was accepted by the employee
  - The summary does not have to be signed by both parties to establish the oral agreement.
  - However, it must document the terms of the employment offered and that the beneficiary has agreed to the offer.

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:
  - Itineraries
    - An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities, if applicable (see the memorandum “Clarifying Guidance on “O” petition Validity Period”).
    - The petitioner must establish that there are events or activities in the beneficiary’s field of extraordinary ability for the validity period requested, e.g. an itinerary for a tour or a series of events.

**EB  
Nonimmigrant  
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O-1 Visa,  
Individuals with  
Extraordinary  
Ability or  
Achievement**

- **Evidentiary Criteria for O-1A**
  - Evidence that the beneficiary has received a major, internationally-recognized award, such as a Nobel Prize, or evidence of at least (3) three of the following:
    - Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
    - Membership in associations in the field for which classification is sought which require outstanding achievements, as judged by recognized national or international experts in the field
    - Published material in professional or major trade publications, newspapers or other major media about the beneficiary and the beneficiary's work in the field for which classification is sought
    - Original scientific, scholarly, or business-related contributions of major significance in the field

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

### Evidentiary Criteria for O-1A

- Evidence that the beneficiary has received a major, internationally-recognized award, such as a Nobel Prize, or evidence of at least (3) three of the following (cont'd):
  - Authorship of scholarly articles in professional journals or other major media in the field for which classification is sought
  - A high salary or other remuneration for services as evidenced by contracts or other reliable evidence
  - Participation on a panel, or individually, as a judge of the work of others in the same or in a field of specialization allied to that field for which classification is sought
  - Employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation
- If the above criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

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O-1 Visa,  
Individuals with  
Extraordinary  
Ability or  
Achievement

- Evidentiary Criteria for O-1B
  - Evidence that the beneficiary has received, or been nominated for, significant national or international awards or prizes in the particular field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or evidence of at least (3) three of the following:
    - Performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements
    - Achieved national or international recognition for achievements, as shown by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications
    - Performed and will perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials.

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

### Evidentiary Criteria for O-1B

- Evidence that the beneficiary has received, or been nominated for, significant national or international awards or prizes in the particular field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or evidence of at least (3) three of the following (cont'd):
  - A record of major commercial or critically acclaimed successes, as shown by such indicators as title, rating or standing in the field, box office receipts, motion picture or television ratings and other occupational achievements reported in trade journals, major newspapers or other publications
  - Received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the beneficiary is engaged, with the testimonials clearly indicating the author's authority, expertise and knowledge of the beneficiary's achievements
  - A high salary or other substantial remuneration for services in relation to others in the field, as shown by contracts or other reliable evidence
- If the above standards do not readily apply to the beneficiary's occupation in the arts, the petitioner may submit comparable evidence in order to establish eligibility (this exception does not apply to the motion picture or television industry).

# EB Nonimmigrant Visas

## O-1 Visa, Individuals with Extraordinary Ability or Achievement

- **Application Process O-2 Visa**
  - The petitioner must file a petition with USCIS for the O-2 visa. The petitioner should file Form I-129.
  - An O-2 alien must be petitioned for in conjunction with the services of the O-1 artistic or athletic alien.
  - The petitioner may not file the Form I-129 more than one year before the O nonimmigrant will begin employment.
  - To avoid delays, Form I-129 should be filed at least 45 days before the date of employment.
- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:

EB  
Nonimmigrant  
Visas  
O-2 Visa, Support  
for Individuals with  
Extraordinary  
Ability or  
Achievement

- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:
  - Consultation
    - If the O-2 petition is for support of an individual with extraordinary ability in athletics or the arts, the consultation must be from the appropriate labor organization; or
    - If the O-2 petition is for support of an individual with extraordinary achievement in motion pictures or television, the consultation must come from an appropriate labor organization and a management organization with expertise in the skill area involved.
  - Exceptions to the Consultation Requirement:
    - If the petitioner can demonstrate that an appropriate peer group, including a labor organization, does not exist the decision will be based on the evidence of record.

EB  
Nonimmigrant  
Visas  
O-2 Visa, Support  
for Individuals with  
Extraordinary  
Ability or  
Achievement

- The petitioner must submit Form I-129, Petition for Nonimmigrant Worker, and the following documentary evidence:
  - Evidentiary Criteria for O-2
    - The evidence should establish the current essentiality, critical skills, and experience of the O-2 beneficiary with the O-1 beneficiary and that the beneficiary has substantial experience performing the critical skills and essential support services for the O-1.
    - In the case of a specific motion picture or television production, the evidence should establish that significant production has taken place outside the United States and will take place inside the United States, and that the continuing participation of the O-2 beneficiary is essential to the successful completion of the production.

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Nonimmigrant  
Visas  
O-1 Visa,  
Individuals with  
Extraordinary  
Ability or  
Achievement

- Post Petition Approval O-1 and O-2
  - Once the visa petition is approved for O-1/O-2 by USCIS, the beneficiary can apply at a U.S. embassy or consulate for the visa on Form DS-160. Department of State (DOS) establishes visa application processing and issuance fees.
  - For more information on visa application processing and issuance fees, see the “Temporary Workers Visas Department of State” page of the USCIS website.

# EB Nonimmigrant Visas

O-1 Visa,  
Individuals with  
Extraordinary  
Ability or  
Achievement

- Period of Stay
  - Up to 3 years initially. USCIS will determine how long the stay should be based on the evidence in the application packet.
    - Can be extended at USCIS discretion in 1 - 5 year increments
- Extension applications must include:
  - Form I-129, Petition for Nonimmigrant Worker
  - A copy of the beneficiary's Form I-94, Arrival/ Departure Record
  - A statement from the petitioner explaining the reasons for the extension

# P-1 Visas

**EB  
Nonimmigrant  
Visas**

**P-1A  
Internationally  
Recognized Athlete**

- The P-1 classification applies to persons coming to the U.S. temporarily to perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance

# EB Nonimmigrant Visas

## P-1A Internationally Recognized Athlete

- **Individual Athletes Eligibility Criteria**

- Applicant must be coming to the United States to participate in individual event, competition or performance in which you are internationally recognized with a high level of achievement;
  - evidenced by a degree of skill and recognition substantially above that ordinarily encountered so that the achievement is renowned, leading or well known in more than one country.

- **Athletic Teams Eligibility Criteria**

- Applicant must be coming to the United States to participate in team events and must have achieved significant international recognition in the sport.
- The event in which your team is participating must be distinguished and require the participation of athletic teams of international recognition.

# EB Nonimmigrant Visas

## P-1A Internationally Recognized Athlete

- **Application Process**

- To come to the United States your U.S. employer must file a Form I-129, Petition for Non-Immigrant Worker, accompanied by the appropriate fee and supporting documentation. The Form I-129 must include the following documents:
  - A written consultation from an appropriate labor organization
  - A copy of the contract with a major U.S. sports league or team or a contract in an individual sport commensurate with international recognition in the sport, if such contracts are normally utilized in the sport
  - An explanation of the event and itinerary
  - Documentation of at least two of the following:
    - Evidence of having participated to a significant extent in a prior season with a major United States sports league
    - Evidence of having participated to a significant extent in international competition with a national team

# EB Nonimmigrant Visas

## P-1A Internationally Recognized Athlete

- **Application Process**

- To come to the United States the U.S. employer must file a Form I-129, Petition for Non-Immigrant Worker, accompanied by the appropriate fee and supporting documentation. The Form I-129 must include the following documents:
  - Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition
  - A written statement from an official of a major U.S. sports league or an official of the governing body of the sport which details how you or your team is internationally recognized (Advisory Opinion)
  - A written statement from a member of the sports media or a recognized expert in the sport which details how you or your team is internationally recognized
  - Evidence that the applicant or their team is ranked, if the sport has international rankings
  - Evidence that the applicant or their team has received a significant honor or award in the sport

# EB Nonimmigrant Visas

## P-1A Internationally Recognized Athlete

### Change of employer

- P-1 Visa Holders may change employers, but only after the new employer has filed a new Form I-129 with USCIS.
- Employment cannot begin with the new employer until the Form I-129 has been approved

# EB Nonimmigrant Visas

## P-1A Internationally Recognized Athlete

### Essential Support Personnel

- Essential Support Personnel who are an integral part of the performance of a P-1 athlete (team) and who perform support services which cannot be readily performed by a U.S. worker, are eligible for P-1 classification.
- Support personnel may include coaches, scouts, trainers and other team officials and referees.
- The U.S. employer must file a separate Form I-129 for support personnel. The petition must include the following documents:
  - A consultation from an appropriate labor organization with expertise in the area of the support person's skill
  - A statement describing the support person's prior and current essentiality, critical skills and experience with the P-1 athlete (team)
  - A copy of a written contract between the employer and the support person or a summary of the terms of the oral agreement under which the support person will be employed

# EB Nonimmigrant Visas

## P1-B – Member of an Internationally Recognized Entertainment Group

The P-1B classification applies to persons coming to the United States temporarily to perform as a member of an entertainment group that has been recognized internationally as outstanding in the discipline for a sustained and substantial period of time.

EB  
Nonimmigrant  
Visas  
P1-B – Member of  
an Internationally  
Recognized  
Entertainment  
Group

Filing for a P-1B

Form I-129 must include the following documents:

- Written consultation from an appropriate labor organization
- Itinerary with the dates and locations of the performances
- A copy of the contract between the petitioner and the beneficiary or summary of terms of the oral agreement under which the beneficiary will be employed
- Evidence that the group has been established and performing regularly for at least one year
- Statement from the petitioner listing each member of the group and the exact dates for which each member has been employed on a regular basis by the group
- Evidence that the group is internationally recognized as outstanding in the discipline for a sustained and substantial period of time as demonstrated by evidence of the group's receipt of, or nomination for, significant international awards or prizes for outstanding achievement in the field, or evidence of at least three of the following:
  - The group has performed and will perform as a starring or leading entertainment group in production or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements

# EB Nonimmigrant Visas

## P-1B – Member of an Internationally Recognized Entertainment Group

Form I-129 must include the following documents:

- The group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines or other published material
- The group has performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials
- The group has a record of major commercial or critically acclaimed successes, as evidenced by indicators such as ratings, box office receipts, record, cassette or video sales, and other achievements as reported in trade journals, major newspapers or other publications
- The group has received significant recognition for achievements from critics, organizations, government agencies or other recognized experts in the field
- The group has commanded and will command a high salary or other substantial remuneration for services comparable to others similarly situated in the field, as evidenced by contracts or other reliable evidence

EB  
Nonimmigrant  
Visas

P-1B – Member of  
an Internationally  
Recognized  
Entertainment  
Group

**Period of Stay**

<b>Initial Period of Stay</b>	<b>Extension of Stay</b>
Time needed to complete the event, competition or performance, not to exceed 1 year	Increments of up to 1 year in order to continue or complete the event, competition or performance.

# EB Nonimmigrant Visas

## **P-1B – Member of an Internationally Recognized Entertainment Group**

- Essential Support Personnel are eligible
- Same criteria as Support Personnel for P-1A
- Can change employers the same as P-1A

# EB Nonimmigrant Visas

## **P-3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program**

The P-3 classification applies to persons coming temporarily to perform, teach or coach as artists or entertainers, individually or as part of a group, under a program that is culturally unique.

**EB  
Nonimmigrant  
Visas  
P-3 Artist or  
Entertainer  
Coming to Be Part  
of a Culturally  
Unique Program**

**Eligibility Criteria:**

- For a P-3 visa, beneficiary must be coming to the United States either individually or as a group for the purpose of:
  - Developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation
- In addition, they must be coming to the United States to participate in a cultural event or events which will further the understanding or development of your art form.
  - The program may be of a commercial or noncommercial nature.

# EB Nonimmigrant Visas

## P-3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program

Form I-129 must include the following documents:

- Written consultation from an appropriate labor organization
- A copy of the contract between the petitioner and the beneficiary or the summary of the terms of an oral agreement between the petitioner and the beneficiary
- An explanation of the event and itinerary
- Affidavits, testimonials or letters from recognized experts attesting to the authenticity of the individual group's skills in performing, presenting, coaching or teaching the unique and traditional art forms and giving the credentials of the expert including the basis of his or her knowledge of the group's skills; OR
- Documentation that the group's performance is culturally unique as evidenced by reviews in newspapers, journals or other published materials.
- Documentation that all of the performances or presentations will be culturally unique events

EB  
Nonimmigrant  
Visas

P-3 Artist or  
Entertainer  
Coming to Be Part  
of a Culturally  
Unique Program

**Period of Stay**

<b>Initial Period of Stay</b>	<b>Extension of Stay</b>
Time needed to complete the event, competition or performance, not to exceed 1 year	Increments of up to 1 year in order to continue or complete the event, competition or performance.

# EB Nonimmigrant Visas

**P-3 Artist or  
Entertainer  
Coming to Be Part  
of a Culturally  
Unique Program**

- Essential Support Personnel are eligible
- Same criteria as Support Personnel for P-1
- Can change employers the same as P-1



TN – NAFTA VISA

EB  
Nonimmigrant  
Visas  
TN – NAFTA Visa

**TN NAFTA Professionals**

- The North American Free Trade Agreement (NAFTA) created special economic and trade relationships for the United States, Canada and Mexico.
- TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level.

EB  
Nonimmigrant  
Visas  
TN – NAFTA Visa

- Among the types of professionals who are eligible to seek admission as TN nonimmigrants are:
  - Accountants
  - Engineers
  - Lawyers
  - Pharmacists
  - Scientists
  - Teachers

EB  
Nonimmigrant  
Visas  
TN – NAFTA Visa

- General eligibility e for TN nonimmigrant status:
  - Must be a citizen of Canada or Mexico;
    - Profession qualifies under the regulations;
    - The position in the United States requires a NAFTA professional;
  - Must have a prearranged full-time or part-time job with a U.S. employer (but not self-employment)
  - Must have the qualifications to practice in the profession in question.

EB  
Nonimmigrant  
Visas  
TN – NAFTA Visa

- General eligibility e for TN nonimmigrant status:
  - Must be able to prove Mexican or Canadian Nationality
  - Must be able to prove qualifications of employment
    - Bachelor's Degree or higher in the field of the industry.
    - Law Degree and Admission to Bar
    - Medical Degree and any Licensing
  - Qualifications must be similar to that of the U.S.

EB  
Nonimmigrant  
Visas  
TN – NAFTA Visa

- TN Visa Applications are initiated with the DOS.
- Canadians can apply at a US Border with their supporting documentation.



# Labor Conditions Application

# Purpose of the LCA

- To test the US work market
- Demonstrate that there are no available or willing US workers available to fill the position

# Labor Condition Application (LCA)

- Who must submit labor condition applications?
  - An employer that intends to employ certain H and E nonimmigrants in a specialty occupation or as a fashion model of distinguished merit and ability.

# Labor Condition Application (LCA)

- Where and when is an LCA to be submitted?
  - An LCA shall be submitted by the employer to the Employment and Training Administration (ETA) **no earlier than six months before** the beginning date of the period of intended employment shown on the LCA.
  - It is the employer's responsibility to ensure ETA receives a complete and accurate LCA.
    - You will likely be preparing the LCA
  - Incomplete or obviously inaccurate LCAs will not be certified by ETA.

# Labor Condition Application (LCA)

- Where and when is an LCA to be submitted?
  - ETA will process all LCAs sequentially and will usually make a determination to certify or not certify an LCA within 7 – 10 working days of the date ETA receives the LCA.
  - You will be notified of errors and corrections
  - LCAs filed by U.S. Mail may not be processed as quickly as those filed electronically
    - **Requires permission to file by mail**

# Labor Condition Application (LCA)

- **Contents of LCA.** Each LCA shall identify the occupational classification for which the LCA is being submitted and shall state:
  - The occupation, by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;
  - The number of nonimmigrants sought;
  - The gross wage rate to be paid to each nonimmigrant, expressed on an hourly, weekly, biweekly, monthly, or annual basis;
  - The starting and ending dates of the nonimmigrants' employment;
  - The place(s) of intended employment;

# Labor Condition Application (LCA)

- **Contents of LCA, cont'd;**
- The prevailing wage for the occupation in the area of intended employment and the specific source (e.g., name of published survey) relied upon by the employer to determine the wage.
  - If the wage is obtained from a SESA, now known as a State Workforce Agency (SWA), the appropriate box must be checked and the wage must be stated; the source for a wage obtained from a source other than a SWA must be identified along with the wage
- For applications filed regarding H-1B nonimmigrants only (and not applications regarding H-1B1 and E-3 nonimmigrants):
  - the employer's status as to whether or not the employer is H-1B-dependent and/or a willful violator, and, if the employer is H-1B-dependent and/or a willful violator, whether the employer will use the application only in support of petitions for exempt H-1B nonimmigrants.

# Labor Condition Application (LCA)

- Contents of LCA, cont'd;
- Multiple positions and/or places of employment.
  - The employer shall file a separate LCA for each occupation in which the employer intends to employ one or more nonimmigrants
    - the LCA may cover more than one intended position (employment opportunity) within that occupation.
  - All intended places of employment shall be identified on the LCA
    - the employer may file one or more additional LCAs to identify additional places of employment.
  - Separate LCAs must be filed for H-1B, H-1B1, and E-3 nonimmigrants.
- Full-time and part-time jobs.
  - The position(s) covered by the LCA may be either full-time or part-time;
  - Full-time and part-time positions can not be combined on a single LCA.

# Labor Condition Application (LCA)

What attestations does the LCA contain?

- An employer's LCA shall contain the labor condition statements which provide that no individual may be admitted or provided status as a nonimmigrant in an occupational classification unless the employer has filed with the Secretary an application stating that:
- The employer is offering and will offer during the period of authorized employment to nonimmigrants no less than the greater of the following wages
  - such offer to include benefits and eligibility for benefits provided as compensation for services, which are to be offered to the nonimmigrants on the same basis and in accordance with the same criteria as the employer offers such benefits to U.S. workers
  - (i) The actual wage paid to the employer's other employees at the worksite with similar experience and qualifications for the specific employment in question; or
  - (ii) The prevailing wage level for the occupational classification in the area of intended employment;

# Labor Condition Application (LCA)

What attestations does the LCA contain?

- The employer will provide working conditions for such nonimmigrants that will not adversely affect the working conditions of workers similarly employed
- There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;
- The employer (if union) has provided and will provide notice of the filing of the labor condition application to:
  - The bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the nonimmigrants are sought

# Labor Condition Application (LCA)

What attestations does the LCA contain?

- If there is no such bargaining representative, affected workers by providing electronic notice of the filing of the LCA or;
  - by posting notice in conspicuous locations at the place(s) of employment.
  - Nonimmigrants by providing a copy of the LCA to each nonimmigrant at the time that such nonimmigrant actually reports to work.
- For applications filed regarding H-1B nonimmigrants only (and not applications regarding H-1B1 or E-3 nonimmigrants):
  - The employer has determined its status concerning H-1B-dependency and/or willful violator, has indicated such status, and if either such status is applicable to the employer, has indicated whether the LCA will be used only for exempt H-1B nonimmigrant(s), as described in § 655.737. LCA.

## Public Access File (PAF)

### A Review of the PAF Requirement

- The provisions at [20 CFR §655.760](#) indicate that employers of H-1B, H-1B1, and E-3 nonimmigrants must make the following documents available for public inspection at the employer's principal place of business or at the place of employment **within one day after the date of submission of the LCA to the Department of Labor:**

# Public Access File (PAF)



Copy of the certified LCA and cover pages



Documentation which provides the wage rate to be paid



Explanation of the system that the employer used to set the “actual wage” the employer has paid or will pay workers in the occupation



Documentation the employer used to establish the “prevailing wage” for the occupation



Document(s) demonstrating compliance with union/employee notification requirements



Summary of benefits offered to U.S. workers in the same occupational classifications as H-1B nonimmigrants

# Public Access File (PAF)



In addition, if the employer undergoes a change in corporate structure, the employer must also maintain the following:



Sworn statement by a responsible official of the new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity



List of each affected LCA and its date of certification



Description of the actual wage system for the new employer entity



FEIN of the new employing entity

## Public Access File (PAF)

Last but not least, there are additional documentation requirements for employers who are considered H-1B dependent or willful violators, including the following:

- List of “exempt” H-1B nonimmigrants
- Summary of recruitment methods, if employer hired any “non-exempt” H-1B workers

# Retention of the PAF



An employer must retain copies of these records for a period of one year beyond the last date on which any H-1B nonimmigrant is employed under the LCA ;or



If no nonimmigrants were employed, one year from the date the LCA expired or was withdrawn.



The employer must maintain required payroll records for a period of three years from the date(s) of the creation of the record(s) –

Payroll records should be kept separate from the PAF.

# Digital Copies of PAF

- Recently, the AILA DOL Liaison committee asked the DOL's Office of Foreign Labor Certification (OFLC) to confirm whether an employer can maintain an "electronic" (or digital) version of the PAF and still satisfy the regulatory requirements which call for the employer to maintain the "original LCA" in the file.
- In response, the OFLC indicated that it **did not have any particular concerns over maintenance of the PAF electronically**
  - the regulations note that only a copy of the LCA must be made available to interested parties
  - presumably, an electronic PAF would allow this requirement to be met.
  - Later, the DOL's Wage & Hour division confirmed that an employer can maintain a scanned copy of the signed LCA (i.e., no requirement to maintain a hard copy of the original signed LCA).

# Common PAF Mistakes in Documenting and Maintaining

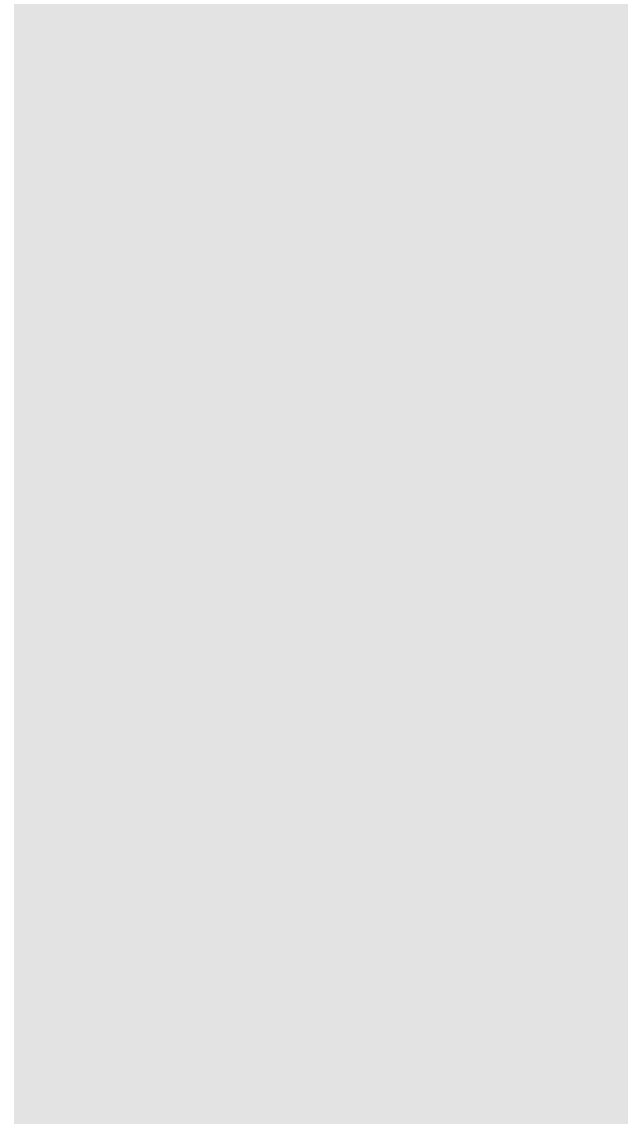
- Copy of certified LCA never makes its way into the file
- No evidence or statement with regards to the “actual wage” paid to individuals at the worksite with similar experience and qualifications
- Lacks documentation necessary to determine the prevailing wage rate (e.g., no job description)
- Position description does not match the wage level set by the employer
- No evidence that the employer has posted [the required US worker notifications](#)

# Case Management

- **Case Management Tips**
- Now more than ever, immigration practitioners must be diligent in communicating the PAF requirements to their H-1B employers in order to avoid potential problems and issues down the road.
- In addition, practitioners who routinely prepare the PAF file (or “packet”) for their employer clients should strongly consider using an immigration case management application which standardizes the various components and ensures adherence to the requirements listed above.

# Case Management

- A well-designed system will enable you to do the following:
  - Create a standardized H-1B PAF document which can be automatically populated from your database with the relevant information pertaining to the case at hand (e.g., name of employer, occupation, wage or wage range, number of workers in the LCA, etc.)
  - Keep track of the various LCA and PAF steps for each H-1B case, including the determination of the actual and prevailing wage rates; the sending of the posting notices or LCA to the employer; and the date upon which the LCA is filed and certified (to name just a few)
  - Create templated emails or letters to be sent to the employer which explain the PAF requirement and the necessary documentation that the employer must maintain
  - Enable the employer client to access and download the various PAF documents through a secure online portal which also provides them with case status updates
  - Generate reports of H-1B, H-1B1, and E-3 employees as needed to assist the employer client in a periodic LCA audit



# Additional Information

# Employment Visa Comparison

	H-1B	L-1 A / L-1B	TN
<b>Basic requirements</b>			
Specific country	No	No	Canada and Mexico
Job Offer Required	Yes	Yes	Yes
Prevailing Wage	Yes	No	No
Bachelor's or higher degree	Yes	No (except for L-1 Professional)	Each profession has its specific requirements
Specialty occupation	Yes	L-1A = Managerial/Executive L-1B = specialized knowledge	NAFTA designated professions
<b>Procedure and processing</b>			
Quota	Yes	No	No
Length of approval	6 years (3, 3)	L-1A = 7 years (2, 3, 3) L-1B = 5 years (2, 3)	Renewable indefinitely in 3-year increments
Work authorization for spouses	No (except when green card is in process)	Yes	No
Dual intent	Yes	Yes	Limited Dual Intent

# EB Preference Categories EB-1

- EB-1 or “Priority Workers
- This elite immigration category consists of three subcategories:
  - Immigrants who are at the very top of their professions;
  - Outstanding professors and researchers; and
  - Executives and managers of multi-national companies.

## EB Preference Categories EB-1

- The EB-1 category is out of reach for all but a few hopeful immigrants. For those who are eligible, immigration can be a relatively easy matter.
- First Preference immigrants are allotted 40,000 visas annually, plus any unused numbers left over from the Fourth and Fifth Employment-Based Preferences
- Any numbers left over are in turn passed down to the Second Employment Preference.

# EB Preference Categories

## EB-1

- The First Preference is “Current” for all countries today.
- Priority Workers usually immigrate relatively quickly.
- Subject to administrative processing time for adjustment of status or consular processing.

# EB Preference Categories EB-1

- “Extraordinary Ability” Immigrants:
- Reserved for the immigrants at the top of their field
  - scientists
  - artists
  - educators
  - business people
  - athletes and others
- Must sustained level of national or international recognition in one’s field.

# EB Preference Categories

## EB-1

- “Extraordinary Ability” Immigrants:
- Can immigrate even if they do not have a job offer, as long as they show that they will continue to work in their profession in the U.S. once they become lawful permanent residents.

# EB Preference Categories EB-1

- “Extraordinary Ability” is a term of art: USCIS has specified the types of evidence which can be used to judge whether someone qualifies in this category:
  - Receipt of major
  - Awards authorship of scholarly articles
  - Press coverage about the person’s work
  - Acting as a judge of peers
  - Outstanding contributions to the field
  - High salary
  - Other documents

# EB Preference Categories EB-1

- USCIS has a very high standard for “extraordinary ability.”
- Even accomplished immigrants cannot be assured of success in this category, which is increasingly reserved for internationally-recognized applicants.

# EB Preference Categories EB-1

- Exempt from PERM Labor Certification
  - Shows the Department of Labor that US workers will not be displaced
- Form I-140 and all Fees
  - Shows USCIS that they meet the requirements to do the job and they meet security requirements
- DS-260 and Fees
  - Shows the Department of State that they have permission to immigrate to the US
  - Consular Processing is the same as FB immigration

# EB Preference Categories

## EB-1

- Outstanding Professors and Researchers:
  - Like Extraordinary Ability Immigrants, “Outstanding Professors and Researchers” are exempt from the labor certification requirement.
  - Unlike their “Extraordinary” counterparts, these immigrants must have a job in the U.S. in order to immigrate.
- This job must be:
  - Tenured (or tenure-track) position at an institution of higher learning;
  - Comparable position to perform research in a university; or
  - Research position at a private company (*provided that the company employs at least three full-time researchers*).

# EB Preference Categories

## EB-1

- Outstanding Professors and Researchers:
  - Like Extraordinary Ability Immigrants, “Outstanding Professors and Researchers” are exempt from the labor certification requirement.
  - Unlike their “Extraordinary” counterparts, these immigrants must have a job in the U.S. in order to immigrate.
- This job must be:
  - Tenured (or tenure-track) position at an institution of higher learning;
  - Comparable position to perform research in a university; or
  - Research position at a private company (*provided that the company employs at least three full-time researchers*).

# EB Preference Categories

## EB-1

- **Outstanding Professors and Researchers:**
  - Persons in this subcategory must enjoy extensive international recognition in their fields of endeavor.
  - They must also have had a minimum of three years' experience in teaching or research.

# EB Preference Categories

## EB-1

- **Outstanding Professors and Researchers:**
  - USCIS has a very high standard for “Outstanding Professors and Researchers.”
  - Even most highly-accomplished professors or researchers—including those with several publications to their name—cannot be assured of success in this category.
  - This type of petition must be supported by strong evidence of the person’s qualifications, including supporting letters from others who are well-recognized in that field.

# EB Preference Categories EB-1

- Exempt from PERM Labor Certification
  - Shows the Department of Labor that US workers will not be displaced
- Form I-140 and all Fees
  - Shows USCIS that they meet the requirements to do the job and they meet security requirements
- DS-260 and Fees
  - Shows the Department of State that they have permission to immigrate to the US
  - Consular Processing is the same as FB immigration

# EB Preference Categories

## EB-1

- Executive and Managerial Intracompany Transferees:
  - Reserved for managers and executives of international companies coming to the U.S. to continue their work.
  - To qualify, an applicant needs to have been employed by the petitioning firm's branch, affiliate, parent or subsidiary abroad for one year out of the last three years prior to arrival in the U.S.

# EB Preference Categories EB-1

- Executive and Managerial Intracompany Transferees:
  - Exempt from the Labor Certification requirement.
  - Need a job offer in the U.S. to immigrate.
  - Petitioning U.S. company must show that the applicant's job duties abroad and in the U.S. have been and will continue to be “executive” or “managerial” in nature.
    - USCIS regulations define these terms in great detail.
  - Petitioning U.S. company must have been doing business in the U.S. for at least one year before it can sponsor an executive or manager for an immigrant visa in this category.

# EB Preference Categories EB-1

- Exempt from PERM Labor Certification
  - Shows the Department of Labor that US workers will not be displaced
- Form I-140 and all Fees
  - Shows USCIS that they meet the requirements to do the job and they meet security requirements
- DS-260 and Fees
  - Shows the Department of State that they have permission to immigrate to the US
  - Consular Processing is the same as FB immigration

# EB Preference Categories

## EB-2

- A Second Preference applicant must generally have a labor certification approved by the Department of Labor.
- A job offer is required and the U.S. employer must file an Immigrant Petition for Alien Worker, Form I-140, on behalf of the applicant.

# EB Preference Categories

## EB-2

- There are two subgroups within this category:
  - Professionals holding an advanced degree (beyond a baccalaureate degree), or a baccalaureate degree and at least five years progressive experience in the profession.
  - Persons with exceptional ability in the sciences, arts, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

# EB Preference Categories

## EB-2

- Together these two subcategories are given an annual allocation of 40,000 visas, plus any numbers left over from the First Employment Preference.
- EB-2 immigrants must normally have a permanent full-time job offer in the U.S.
- They usually must also undergo the Labor Certification process.
  - A rare few, who succeed in showing that their immigration would be in the “national interest,” can immigrate without job offers or Labor Certifications.

# EB Preference Categories

## EB-2

- Professionals with Advanced Degrees
- To qualify as a professional with an advanced degree, an applicant must have a Master's Degree or higher level degree, such as a Doctorate.
- The degree can be from a U.S. university, or it can be a degree from a foreign university that has been found to be the equivalent of a U.S. degree.
  - Must be credentialed by a US Credentialing Company

# EB Preference Categories

## EB-2

- Professionals with Advanced Degrees
- To qualify as a professional with an advanced degree, an applicant must have a Master's Degree or higher level degree, such as a Doctorate.
- The degree can be from a U.S. university, or it can be a degree from a foreign university that has been found to be the equivalent of a U.S. degree.
  - Must be credentialed by a US Credentialing Company

# EB Preference Categories EB-2

- Professionals with Advanced Degrees
- Persons who have Bachelor's degrees only can also qualify in this category, if they can demonstrate that they have *at least five years of progressive experience in their professions. - AFTER THEY EARNED THEIR BA/BS.*
- In these cases, the experience combined with the Bachelor's degree is considered to be the "equivalent" of an advanced degree.

# EB Preference Categories EB-2

- Immigrants with Exceptional Ability
- Applicants without academic degrees can qualify under the Second Employment-Based Preference, if they prove that they have “Exceptional Ability” in their line of work.
  - “Exceptional Ability” is a term of art; USCIS has specified the type of evidence that can be used to prove qualification under this category.
- The evidence is similar to but less stringent than that needed by “Extraordinary Ability Immigrants.”

# EB Preference Categories

## EB-2

- Requires PERM Labor Certification
  - Shows the Department of Labor that US workers will not be displaced
- Form I-140 and all Fees
  - Shows USCIS that they meet the requirements to do the job and they meet security requirements
- DS-260 and Fees
  - Shows the Department of State that they have permission to immigrate to the US
  - Consular Processing is the same as FB immigration

# EB Preference Categories

## EB-2

- National Interest Waivers
- EB-2 applicants who can show that their presence in the U.S. would be in the “National Interest” can immigrate without a job offer or a Labor Certification.
- This “waiver” can prove invaluable to qualified hopeful immigrants who have not yet found appropriate jobs, or to those who cannot obtain labor certifications.
  - Needs an Attorney

# EB Preference Categories

## EB-3

- A Third Preference applicant must generally have a labor certification approved by the Department of Labor.
- A job offer is required and the U.S. employer must file an Immigrant Petition for Alien Worker, Form I-140, on behalf of the applicant.

# EB Preference Categories EB-3

- There are three subgroups within this category:
  - Skilled workers are persons whose jobs require a minimum of 2 years training or work experience that are not temporary or seasonal.
  - Professionals are members of the professions whose jobs require at least a baccalaureate degree from a U.S. university or college or its foreign equivalent degree.
  - Unskilled workers (Other workers) are persons capable of filling positions that require less than two years training or experience that are not temporary or seasonal.

# EB Preference Categories

## EB-3

- Together, these workers receive 40,000 immigrant numbers annually, plus any unused visas left over from the First and Second Employment-Based preferences.

# EB Preference Categories

## EB-3

- The first subcategory refers to Professionals with Bachelor's degrees. (will need credentialing)
- The second refers to Skilled Workers.
- Visas in these two subcategories are backlogged for all countries.

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## EB-3

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  - With a small annual worldwide quota capped at 10,000, this subcategory is usually subject to backlogs

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# EB Preference Categories

## EB-3

- Skilled vs. Unskilled Workers
  - If the job is “unskilled,” the potential benefits of filing often do not warrant the risks.
  - Ascertaining whether a given occupation is “skilled” is thus often the central task in a Third Preference Employment-Based Immigration.

# EB Preference Categories EB-3

- Skilled vs. Unskilled Workers
  - A “skilled” occupation is defined as one which requires at least two years of experience.
    - Regardless how adept one is at a given occupation, if the job can be learned in less than two years, it is considered “unskilled.”
    - Examples of “skilled” occupations include baker, welder inspector, and paralegal.
  - “Unskilled” professions include bartender, welder and typist..

# EB Preference Categories

## EB-3

- Requires PERM Labor Certification
  - Shows the Department of Labor that US workers will not be displaced
- Form I-140 and all Fees
  - Shows USCIS that they meet the requirements to do the job and they meet security requirements
- DS-260 and Fees
  - Shows the Department of State that they have permission to immigrate to the US
  - Consular Processing is the same as FB immigration

# EB Preference Categories EB-4

- Each year, 10,000 persons can immigrate to the U.S. through the Fourth Preference Employment-Based visa category
- This catch-all category includes ten separate subclasses of immigrants not covered by other categories.
- Best known among these is the “Religious Workers” subclass.

# EB Preference Categories

## EB-4

- Religious workers enjoy relaxed immigration eligibility requirements.
- Most notably, they are exempt from the Labor Certification process.
- They also avoid long waiting periods.
- At the time of this writing, Religious Worker immigrants are “current” for all countries..

# EB Preference Categories

## EB-4

- Persons are qualified to immigrate as Religious Workers if they have been a member of and have worked for a qualifying religious denomination continuously for the two years immediately before filing their petitions.
- They also must be coming to the U.S. to work for an organization which belongs to the same denomination.

# EB Preference Categories EB-4

- Not all types of religious workers are eligible to immigrate in the EB-4 category.
- Eligibility is limited to:
  - Ordained or authorized ministers;
  - Religious professionals; and
  - Religious vocational and occupational workers.
- Religious professionals include teachers and others whose jobs require a Bachelor's degree.
- Vocational workers include monks and nuns.
- Religious occupations include liturgical work and religious counseling.

# EB Preference Categories

## EB-4

- Exempt from PERM Labor Certification
  - Shows the Department of Labor that US workers will not be displaced
- Form I-360 and all Fees
  - Shows USCIS that they meet the requirements to do the job and they meet security requirements
- DS-260 and Fees
  - Shows the Department of State that they have permission to immigrate to the US
  - Consular Processing is the same as FB immigration

# EB Preference Categories EB-5

- Immigrant Investor visa categories are for capital investment by foreign investors in new commercial enterprises in the United States which provide job creation.

# EB Preference Categories EB-5

- Commonly known as the “Millionaire’s Visa,” it is actually an “Employment Creation” category.
- This visa was intended to encourage new investment in the U.S. and the new jobs which would result.
- 10,000 annual immigrant slots are reserved for this category.

# EB Preference Categories EB-5

- Eligibility Requirements
  - Employment Creation immigrants must meet several core requirements, including:
    - Creating 10 full-time jobs
    - Investing \$1 Million (\$500,000 in areas designated as “high unemployment”).

# EB Preference Categories EB-5

- Eligibility Requirements
  - Does not need to be a “new business” can be an acquisition that the capital is going to be invested in
  - Does not matter what kind of jobs
  - USCIS is very concerned that the money invested be “clean.”
    - Applicants for this visa must show that the money they invest was gained by legal means.
    - In effect, one must trace the money to its original source in order to show where it came from.

# EB Preference Categories EB-5

- Application Process:
- EB-5 application is filed on Form I-526 directly with the California Service Center.
  - Current processing times for this petition are approximately over one year.
- Once an initial Immigrant Investor application is approved, the immigrant (and his or her immediate family) becomes a “Conditional Permanent Resident.”
  - Any time between 21 months and 24 months later, the immigrant must apply to “Remove the Condition.”

# The PERM Labor Certification

- Labor Certification:
- As the first step in the PERM process, your employer makes a “prevailing wage request” to the U.S. Department of Labor (DOL) via its website, <http://icert.doleta.gov/>.
  - The prevailing wage request provides the DOL with information about the offer such as job requirements, job duties, and the worksite location.
  - The DOL uses this information to issue the employer a prevailing wage determination (PWD)
  - Stating the common wage for the specific job position in the specific worksite location.

The PERM Labor  
Certification  
Labor Certification  
Step Two: Placing Ads  
and Recruiting

- The next recruitment step is especially critical, as the entire point of the PERM process is to demonstrate to the DOL that no willing and qualified U.S. workers applied for the job opportunity.
- The employer must conduct “good faith” recruitment, which means the recruitment must be genuinely calculated to attract any available U.S. workers.

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## The PERM Labor Certification Labor Certification Step Two: Placing Ads and Recruiting

- For PERM, there are three mandatory advertisements. The employer must place an advertisement with the state workforce agency in the state of intended employment.
- For instance, let's say the employer is located in Virginia, but the job opportunity is located in Maryland. The employer must place the advertisement with the Maryland state workforce agency, since that is the area of intended employment.
- Additionally, the employer must place newspaper advertisements on two different Sundays.
  - The newspaper must be the major newspaper of general circulation in the area of intended employment. In the above example, a good choice for the newspaper would be the Washington Post.
- Along with the mandatory advertisements, the employer must also place three other advertisements and post a notice of the job opportunity at the worksite location.

The PERM Labor  
Certification  
Labor Certification  
Step Two: Placing Ads  
and Recruiting

- It is usually recommended that employers place all of the advertisements at the same time (or close to the same time) if possible.
  - The reason for this is that all of the advertisements must be less than 180 days old at the time of filing the PERM application.
  - If one of the advertisements is older than 180 days, that ad cannot be used for the PERM, and the employer will need to place another ad before filing the PERM.

The PERM Labor  
Certification  
Labor Certification  
Step Three: Filing ETA  
Form 9089

- After the advertisements are complete,. The employer will file the PERM application with the DOL using ETA Form 9089 (provided no qualified and willing U.S. workers applied for the job position).
- Just like with the prevailing wage request, the employer files this form electronically at the DOL website:<http://www.plc.doleta.gov>. The  
  - he ETA Form 9089 again provides the DOL with information on the job opportunity (such as the worksite location, duties, requirements, and prevailing wage), information on the employer's recruitment process (such as where the employer placed the ads and on what dates), and information on the foreign worker (such as the worker's place of birth, education credentials, and work experience).

The PERM Labor  
Certification  
Labor Certification  
Step Three: Filing ETA  
Form 9089

- After filing the ETA Form 9089, you will wait several months for the DOL to adjudicate the PERM. The DOL can:
  - Approve the PERM
  - Deny the PERM
  - Audit the PERM.
- If the PERM is audited, the DOL will ask the employer to provide additional evidence for the application.
- After the employer responds to the audit request, the DOL will review the new evidence and either approve or deny the PERM.

The PERM Labor  
Certification  
Other Requirements

- Must post job postings in a public place – and must be able to prove
- Must maintain a Public Access File (PAF)
  - Shows recruiting efforts
  - Resumes of applicants
  - PWD
  - Tracking of applicants not selected
  - Proof that you offered the job to a US person and they denied the offer

The PERM Labor  
Certification  
Avoiding Audits

- Review the PERM book in your materials for detail
- We will discuss briefly in this seminar

## Final Thoughts

- Employment Visas are a critical avenue to migrating to the United States for some.
- These visas are often very complicated, laborious and there is a lot of room for error
- Errors in the H and E categories can create significant and sometimes irreparable harm to the alien – You should always consult with an attorney before proceeding with a H or E visa.
- O and P visas are easily able to be handled by a well trained Immigration Consultant
- H, E and green cards should always involve an attorney